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सं. 45] नई दिल्ली, नवम्बर 3—नवम्बर 9, 2013, शनिवार/कार्तिक 12—कार्तिक 18, 1935
No. 45] NEW DELHI, NOVEMBER 3—NOVEMBER 9, 2013, SATURDAY/KARTIKA 12—KARTIKA 18, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

आयकर विभाग

(मुख्य आयकर आयुक्त का कार्यालय, चेन्नई-IV)

चेन्नई, 27 सितम्बर, 2013

सं 1/2013-14

कां०आ० 2333.—आम सूचना के लिए यह अधिसूचना जारी की जाती है कि मेसर्स निस्सान अशोक लिलेण्ड टेक्नॉलोजीस लिमिटेड, खीवराज काम्प्लेक्स-II, चौथी मंजिल, 477-482, अण्णा सालै, नन्दनम, चेन्नै-600 035 नामक कम्पनी को (जिनको भारत सरकार, विज्ञान और तकनीकी मंत्रालय, नई दिल्ली के आदेश संख्या: एफ० टी०यू०-IV/आर०डी०आई०/2904/2009, दिनांक 28.08.2009 द्वारा आन्तरिक आर एण्ड डी इकाईयों के लिए दिनांक 31.03.2012 तक पहले ही मान्यता प्रदान की गई है।) वित्तीय वर्ष 2013-14 से 2016-17 तक वैज्ञानिक अनुसंधान करने वाले अन्य संस्थाओं के वर्ग में आयकर नियम 1962 के नियम 5एफ के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उप-धारा (1) के खण्ड (ii) के प्रयोजन के लिए निम्नलिखित शर्तों के साथ मान्यता दी जाती है।

(क) उपरोक्त कम्पनी को संदत्त राशि को वैज्ञानिक अनुसंधान के प्रयोजन के लिए खर्च किया जाएगा।

(ख) उपरोक्त कम्पनी अपने निजी कर्मचारियों द्वारा अपनी आस्तियों का प्रयोग करते हुए वैज्ञानिक अनुसंधान कार्य करेगी।

(ग) आयकर अधिनियम की धारा 35 की उप-धारा (1) के खण्ड (ii) के अधीन अनुमोदन प्राप्त कम्पनी वैज्ञानिक अनुसंधान के प्रयोजन के लिए प्राप्त निधि के सन्दर्भ में अनुसंधान में खर्च की गई रकम को दर्शाते हुए अलग लेखा-बही रखेगी, अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में विनिर्दिष्ट प्रकार लेखा-बहियों की लेखा परीक्षा कराएगी और उक्त लेखाकार द्वारा सत्यापित और हस्ताक्षरित लेखा परीक्षा रिपोर्ट को संबंधित आयकर निदेशक या आयकर आयुक्त के पास अधिनियम की धारा 139 की उप-धारा (1) में आयकर विवरणी दाखिल करने के लिए उल्लिखित समय सीमा के अन्तर्गत दाखिल करेगी।

(घ) अनुमोदित कम्पनी वैज्ञानिक अनुसंधान के प्रयोजन के लिए प्राप्त दान और इस प्रयोजनार्थ खर्च का विवरण अलग से तैयार करके रखेगी। उक्त विवरण की एक प्रमाणित प्रति लेखाकार की लेखा रिपोर्ट के साथ उप-नियम (3) के अनुसार प्रस्तुत करेगी।

(ड) अनुमोदन दिए जाने के बाद उपरोक्त कम्पनी हर साल आयकर अधिनियम की धारा 139 की उप-धारा (1) के अधीन आयकर विवरणी दाखिल करने के लिए विनिर्दिष्ट समय-सीमा के अन्दर संबंधित आयकर आयुक्त को निम्नलिखित विषयों पर प्रकाश डालते हुए एक विवरण प्रस्तुत करेगी।

(i) पूर्व वर्ष में किए गए अनुसंधान कार्य के बारे में एक विस्तृत टिप्पणी।

(ii) राष्ट्रीय और अंतर-राष्ट्रीय पत्रिकाओं में संदर्भाधीन वर्ष में प्रकाशित अनुसंधान लेखों की संक्षिप्त जानकारी।

(iii) संदर्भाधीन वर्ष में आवेदन किए गए या पंजीकृत किए गए पेटेंट या अन्य अधिकार का विवरण।

(iv) अगले वर्षों के लिए उद्देशित अनुसंधान परियोजनाओं का कार्यक्रम और इन कार्यक्रमों के लिए वित्तीय-आबंटन का विवरण।

(च) यदि आयकर आयुक्त इस बात से संतुष्ट है कि उपरोक्त कम्पनी

(i) अपने वैज्ञानिक अनुसंधान कार्यों के लिए अलग लेखा-बही नहीं रखती है

(ii) लेखा-परीक्षा रिपोर्ट प्रस्तुत करने में चूक की है

(iii) अनुसंधान के लिए प्राप्त और उसमें लगे खर्च के संदर्भ में या उप-खण्ड (ड) में उल्लिखित प्रकार से विवरण प्रस्तुत नहीं की है, या

(iv) अनुसंधान कार्यों को समाप्त कर दिया हो या कार्यों में यथार्थता नहीं हो, या

(v) जिन शर्तों के आधार पर अनुमोदन दिया गया हो, उन शर्तों का अनुपालन नहीं करती है

तो ऐसे संदर्भ में उचित जांच पड़ताल के बाद उपरोक्त खण्ड (i) से (v) तक के संदर्भ में एक रिपोर्ट धारा 139 की उप-धारा (1) के अधीन विवरणी दाखिल करने के लिए निर्दिष्ट दिन से छः महीने के अन्दर अपने मुख्य आयकर आयुक्त को प्रस्तुत करेगी।

यदि नियम 5च में उल्लिखित (i) से (v) तक के शर्तों में से किसी भी शर्त को पूरा नहीं किया गया या संबंधित आयकर आयुक्त से नियम 5च(3)(च) के अंतर्गत प्राप्त रिपोर्ट के आधार पर उपरोक्त अनुमोदन को रद्द किया जा सकता है।

[फा० सी० सं० 4104/मु आ आ-IV/2013-14]

बी० के० मिश्र, मुख्य आयकर आयुक्त

INCOME-TAX DEPARTMENT

(OFFICE OF THE CHIEF COMMISSIONER OF
INCOME-TAX, CHENNAI - IV)
Chennai, the 27th September, 2013

No. 1/2013-14

S.O. 2333.—It is hereby notified for general information that the company M/s. Nissan Ashok Leyland

Technologies Ltd., Khivraj Complex II, 4th Floor, 477-482, Anna Salai, Nandanam, Chennai-600035, (already granted recognition for its in-house R & D units by the Ministry of Science & Technology, Govt. of India, New Delhi vide their order dated 28.08.2009 in F.No.TU-IV/RD/2904/2009 till 31.03.2012), has been approved for the purpose of Clause (iia) of sub-section (1) of Section 35 of the Income-tax Act, 1961 read with Rule 5F of the Income-tax Rules, 1962 (said Rules), for the Assessment Years 2013-14 to 2016-17 in the category of "other institution", engaged in research activities, subject to the following conditions, namely:—

(a) The sum paid to the above approved company shall be used for scientific research;

(b) The application company shall carry on scientific research through its own employees using its own assets;

(c) The company approved under Clause (iia) if sub-section (1) of Section 35 shall maintain separate books of account in respect of the sums received by it for scientific research, reflect therein the amount used for carrying on research, get such books of account audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of Section 139 of the said Act;

(d) The approved company shall maintain a separate statement of donations received and amounts used for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred in sub-rule (3).

(e) Subsequent to the approval, the Company shall, every year, by the due date of furnishing the return of income under sub-section (1) of Section 139, furnish a statement to the Commissioner of Income-tax, containing the following information namely :-

(i) a detailed note on the research work undertaken by it during the previous year;

(ii) a summary of research articles published in national or international journals during the year;

(iii) any patents or other similar rights applied for or registered during the year;

(iv) programme of research projects to be undertaken during the forthcoming year and the financial allocation for such projects.

(f) If the Commissioner of Income-tax is satisfied that the company—

(i) is not maintaining separate books of account for research activities, or

(ii) has failed to furnish its audit report, or

(iii) has not furnished the statement of the sums received and the sum used for research, or a statement referred to in sub-clause (e), or

(iv) has ceased to carry on its research activities, or its activities are not genuine to it,

(v) is not fulfilling the conditions subject to which approval was granted to it,

he may after making appropriate enquiries, furnish a report on the circumstances referred to in sub-clauses (i) to (v) to the jurisdictional Chief Commissioner of Income-tax within six months from the date of furnishing the return of income under sub-section (1) of section 139.

The above approval may be withdrawn under Rule 5F(2)(j), if any of the above conditions in (a) to (e) if Rule 5F is not satisfied or on receipt of the CIT's report as per Rule 5F(3)(f).

[F. C. No. 4104/CCIT-IV/2013-14]

B. K. MISRA, Chief Commissioner of Income-tax

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 7 नवम्बर, 2013

का०आ० 2334.—जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार, एतद्वारा, श्री वी० के० शर्मा, प्रबंध निदेशक, भारतीय जीवन बीमा निगम को 01 नवम्बर, 2013 के अपराह्न से उनकी अधिवर्षिता की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, उक्त निगम के सदस्य के रूप में नियुक्त करती है।

[फा० सं० ए-15011/10/2012-बीमा-I]

प्रिया कुमार, निदेशक (बीमा)

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 7th November, 2013

S.O. 2334.—In exercise of the powers conferred by section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Shri V. K. Sharma, Managing Director, Life Insurance Corporation of India as a Member of the said Corporation with effect from the afternoon of 1st November, 2013 till the date of his superannuation or till further orders, whichever is earlier.

[F. No. A-15011/10/2012-Ins.I]

PRIYA KUMAR, Director (Insurance)

नई दिल्ली, 7 नवम्बर, 2013

का०आ० 2335.—जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय

सरकार, एतद्वारा, श्रीमती उषा संगवान, प्रबंध निदेशक, भारतीय जीवन बीमा निगम को 01 नवम्बर, 2013 के अपराह्न से उनकी अधिवर्षिता की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, उक्त निगम के सदस्य के रूप में नियुक्त करती है।

[फा० सं० ए-15011/10/2012-बीमा-I]

प्रिया कुमार, निदेशक (बीमा)

New Delhi, the 7th November, 2013

S.O. 2335.—In exercise of the powers conferred by section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Smt. Usha Sangwan Managing Director, Life Insurance Corporation of India as a Member of the said Corporation with effect from the afternoon of 1st November, 2013 till the date of her superannuation or till further orders, whichever is earlier.

[F. No. A-15011/10/2012-Ins.I]

PRIYA KUMAR, Director (Insurance)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 1 अक्टूबर, 2013

का०आ० 2336.—औद्योगिक विवाद अधिनियम, 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 248/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/10/2013 को प्राप्त हुआ था।

[सं० एल-41012/27/92-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 1st October, 2013

S.O. 2336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 248/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Railway, and their workmen, received by the Central Government on 01/10/2013.

[No. L-41012/27/92-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/248/97

Presiding Officer,
SHRI R.B. PATLE

Shri Y. Rambabu,
S/o Shri Sanyasi,
Purana Bhilai-3,
Distt. Durg

....Workman

Versus

Divisional Railway Manager,
South Eastern Railway,
Bilaspur-495004

....Management

AWARD

Passed on this 2nd day of May, 2013

1. As per letter dated 2-9-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-41012/27/92-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of DRM, S.E. Railway, Bilaspur in terminating the services of Shri Y. Rambabu is legal and justified? If not, to what relief is the workman entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted his statement of claim at page 9/1 to 9/3 of record. The case of Ist party workman is that he was given temporary status from 14-2-90. His services were terminated without assigning reasons. Principles of natural justice were not followed. He was not given notice before termination of services. That he was subsequently intimated that services of 150 employees were terminated on the ground that they have obtained employment producing false certificate. That it cast stigma on him. He has also referred to the judgements and orders in other matters by CAT, Jabalpur. That his services are terminated in violation of Section 25-F of I.D. Act and prays for reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 11/1 to 11/5. It is case of IInd party that Ist party was engaged as casual Gangman from 14-2-90 subject to conditions that if the documents produced by him are found false at any time during their engagement, their service would be terminated automatically without any notice. The service certificate produced by him was found bogus. His services is terminated from 29-8-90 as per conditions in the deptt. rules and services. 150 candidates were terminated including the Ist party workman.

4. It is submitted that Ist party workman was not holding civil post under Union of India nor he held any civil post earlier. The case of the applicant was of forgery with the Railway Administration. He was not an employee, he is not entitled to protection under I.D. Act, 1947. It is reiterated that Ist party workman was engaged as casual

gangman on daily rate of pay. He was posted under the CPWI Abhanpur on 14-2-90. The workman was engaged subject to the condition laid down in the appointment letter. As the service certificate is found false after verification, his services are terminated from 29-8-90. The above facts are the repeated in the Written Statement. The certificate of service produced by employees found genuine after verification of service. That out of 861 casual candidates, services of 150 casual candidates were terminated as the certificate produced by them were found false after verification. Other contentions of Ist party workman are denied. It is denied that Ist party workman is entitled to reinstatement. That workman had not completed 240 days continuous service. IInd party prayed for rejection of the relief prayed by Ist party workman.

5. Ist party workman filed rejoinder at page 15/1 to 15/3. It is not correct that the workman was not employed only on the basis of the past service card. There is no rule or regulation in Railway requiring production of casual labour card for the purpose of appointment. Workman was not aware of the said documents. He denies that he had submitted false and fabricated document of service card. It is denied that his claim is not permissible under I.D. Act. It is submitted that he had not obtained appointment by producing false card. That the termination on the allegation of producing false service card casting stigma and therefore Departmental Enquiry is necessary. He further submits that principles of natural justice was violated and terminated his services.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:

- | | |
|---|--|
| (i) Whether the action of the management of South Eastern Railway, Bilaspur Division in terminating the services of Shri Y. Rambabu, S/o Shri Sanyasi is justified? | In Affirmative |
| (ii) If so, to what relief the workman is entitled to? | Ist party workman is not entitled to relief prayed by him. |

REASONS

7. Ist party workman is challenging his termination for the allegations being produced false service certificate/ casual labour card. It is contended by him that he was not given any opportunity before terminating the services nor enquiry was held, no notice was issued, principles of natural justice violated, action of management is violative of Article 20 of the Constitution of India. All those contentions are denied by IInd party. However IInd party has not disputed that Ist party workman was engaged as casual labour from 14-2-90 and his services were terminated from 29-8-90. Ist

party workman filed affidavit of evidence covering the contentions in the statement of claim. That he was appointed against regular and permanent vacancy. His appointment was in accordance with law. There was no condition that past service certificates would be submitted. It is deemed that the past certificate produced by him was false. That no enquiry was held before termination of his service. Any such report was not made available to him. In his cross-examination, he says that before his appointment in Railway, he was working in Bhilai Steel Plant. He had received certificate. It was submitted by him at the time of appointment in Railway that he had produced certificate received by him. He was appointed as per the conditions in appointment order. He was unable to tell whether he was appointed temporarily. The appointment order Exhibit W-1 clearly refers to engagement as casual workman on daily rate of pay. That the candidates who attend the temporary status and got CPC Scale pay will be eligible to get the CPS Scale of pay. The Ist party workman hardly worked for 2 months 4 days on establishment of IInd party. He does not hold any regular post. He is not appointed against Civil Post.

8. The evidence of management's witness Shri R.S. Bepari on affidavit has stated that the false casual gangmen after bifurcation from Bilaspur Division, all cases of Raipur Division related to false cases of gangmen were transferred to Raipur. Similar cases were filed before CAT, Jabalpur and the matters were taken before Hon'ble High Court, Chhattisgarh. Which were remitted back by to CAT, Jabalpur and are pending. That appointment were made with the condition that if the certificate submitted by them were false, their services will be automatically terminated. The files and documents were stolen from the chamber of Administrative Officer, Shri Bhasker Rao by breaking the lock of the Almirah. FIR was filed by the management. In his cross-examination, the management's witness says that he was not working when the employee were discharged. The engagement letter were given as casual gangman. The fake certificate were stolen from the office of the Railway. He was unable to tell from which place those certificates were issued. For security of record, no guard was posted. Deliberation was made and certificates were found fake. He was unable to tell the name of the Verifying Officer. That he had seen verification report and report on its basis. In view of the verification report, documents were found fake. In case of casual employee, it is not necessary to hold departmental enquiry.

9. Learned counsel for Ist party workman Mr. Shashi heavily emphasized that the employee was not given opportunity of hearing. That even 240 days service is not completed. The dispute is tenable. That the services of Ist party workman are terminated on the ground that he submitted false certificate casting stigma, no enquiry was held, no opportunity of hearing was given and therefore the allegation of cheating, forgery were made. Therefore

the termination of service is illegal. In reply, learned counsel for IInd party management supports the order of termination. That Ist party workman has not completed 240 days, he is not holding civil post. Ist party workman is not entitled to protection of article 311 of the constitution of India. That his services are not governed by CCS Rules and prays for rejection of relief prayed by Ist party workman.

10. Learned counsel for Ist party Mr. Shashi relies on—

Ratio held in the case of Nepal Singh Versus State of U.P. reported in AIR 1990 Supreme Court 1459. Their Lordship of the Apex Court held an order terminating the services of a temporary Government servant and ex facie innocuous in that it doesnot cast any stigma on the Government Servant or visits him with penal consequences must be regarded as effecting a termination simpliciter, but it is discovered on the basis of material adduced that although innocent in its terms the order was passed infact with a view to punishing the Government servant, it is a punitive order which can be passed only after complying with Article 311.

From reading para-2 of the judgement, it is clear that case before their Lordship was relating to temporary Sub Inspector of Police posted at Shajapur. Ist party workman is not holding any civil post, he was not regular employee of the Railway. Therefore Article 311 is not applicable in the present case.

From reading of Article 311, it is clear that the said article only extends protection to the person who is member of Civil Service of Union and All India Service or Civil Service of State or holds a civil post under Union of a State. Therefore the ratio in above cited case cannot be applied to the case at my hand.

11. Next reliance is placed by Mr. Shashi in ratio held in case of—

Shri Anoop Jaiswal versus Government of India and another reported in 1984(2) Supreme Court Cases 369. Their Lordship held order punitive in nature which in absence of any proper enquiry amounted to violation of Article 311(2) of the Constitution, hence the order is liable to be set aside reinstated in service with full benefits. The case before their Lordship relate to appointment of probationer as IPS Officer. Delay was alleged on his part for P.T./unarmed combat practice. The workman was engaged as casual labour hardly worked for about 2 months 4 days, was not holding any civil post therefore the ratio in above cited case cannot be applied to the present case at hand.

In case of Bhagwan Singh Rawat versus State of MP and others reported in 2003(4) M.P.H.T. 309, the allegation against petitioner is of making demand of illegal gratification. Removal from the post of Agriculture Member.

It was held by his Lordship that until unless petitioner is found guilty of demanding illegal gratification and charge is established petitioner could not be fastened with the penalty of removal.

As the workman is not holding any civil post neither he is regular employee of the Railway, the ratio held in the case cannot be applied to the present case at hand.

Reliance is placed on ratio held in case of Radha Mohan Goswami and others versus State of Madhya Pradesh and others reported in 2004(2) M.P.H.T. 49. His Lordship considering the petitioners were appointed on daily wage basis, the same persons were appointed on daily wage. In compliance of these orders they joined their posts. Suddenly order of regularization in favour of employees cancelled on 10-6-2003. Against this cancellation, his Lordship held right accrued to petitioners when the order was passed on 3-6-2003. An administrative order having adverse effect on accrued right of employee without giving him opportunity of hearing is unsustainable. Hence order dated 10-6-2003 cancelling order of regularization dated 3-6-03 was quashed.

In present case, Ist party workman was never regularized. The facts of above cited case are not comparable. The facts of the above said case cannot be beneficially applied to the case at hand.

12. Counsel for IInd party Shri Tripathi has produced copy of Indian Railway Establishment.

Para 2001 Clause 1(b) provides that casual labours are also engaged on Railways for execution of Railway projects, such as new lines, doubling, conversion, construction of buildings, track renewals, route relay interlocking Railway electrification, Setting up of new units etc. Casual Labour so engaged are referred to as project Casual Labour. Such of those casual labour engaged on open line (revenue) works, who continue to do the same work for which they were engaged or other work of the same type for more than 120 days without a break will be treated as temporary on completion of 120 days continuous employment."

However Para-2004 of the said manual provides that notice is necessary under any statutory obligation, no notice is required for termination of service of casual labour.

Condition in Exhibit M-1 shows that if the service certificate produced by such gangman found false after verification. The services are liable to be terminated without notice. Ist party workman accepted the said appointment order and joined the service therefore said condition No. 1 is binding on him. He cannot be permitted to claim contrary to the said condition. That the copies of judgement in several matter by Hon'ble CAT, Ahmedabad and Jabalpur are produced on record but the judgement in R/191/91 by CGIT, Jabalpur, the facts are not comparable and the

jurisdiction of CAT is wide whereas the jurisdiction of this Tribunal is limited to decide the reference under I.D. Act. Therefore the judgements delivered by CAT in different cases are not binding.

13. Rule 3(1) of CCS Rules clearly provides that those rules are not applicable to the Railway servant.

14. The legal position with respect to the jurisdiction, powers of Central Administrative Tribunal together provided in Section 14 of the Administrative Tribunal's Act, 1985 is clear that the casual labours acquiring temporary status doesnot become a temporary Railway Servant or a member of Railway Service Card holder under Railway. Section 14(1)(A) is not attracted to the consideration of the Tribunal.

15. Learned counsel for Ist party Mr. Shashi during further course of argument submitted that Ist party workman is covered under Section 2(s) of I.D. Act. The establishment of IInd party is covered as Industry under Section 2(j) of the I.D. Act. That the dispute defined under Section 2(k) covers difference between employees employer between employers and workman etc. The appropriate Government is Central Government, reference is made. The reference is tenable. The services were terminated without notice or giving opportunity of hearing. Therefore the termination of service of Ist party workman is illegal. Chapter V-A of I.D. Act dealing with retrenchment under Section 25-B of I.D. Act provides continuous service within meaning of clause (1) for a period of one year if the employee worked for 240 days during preceding 12 calendar months. Ist party workman has not completed 240 days continuous service therefore he is not covered as workman under Section 25(B) of I.D. Act. For said reason, Ist party workman is not entitled to protection under Section 25-F clause (a), (b) of I.D. Act. He is not entitled to notice prior to his termination or retrenchment compensation provided under clause (b) of Section 25-F. That when service certificate produced by him is found false, no notice is required as per the condition in Exhibit M-1. For above reasons, I record finding on Point No. 1 in Affirmative.

16. Point No. 2 — In view of my finding in Point No. 1 that the termination of services of Ist party workman is legal, the workman is not entitled to any relief prayed by him. Accordingly I record in my finding on point No. 2.

17. In the result, award is passed as under:—

(1) Termination of Ist party workman Shri Y. Rambabu, S/o Shri Sanyasi by IInd party management is legal.

(2) Reliefs prayed by Ist party workman Shri Y. Rambabu is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 अक्टूबर, 2013

का०आ० 2337.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 06/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.9.2013 को प्राप्त हुआ था।

[सं० एल-12012/108/06-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th October, 2013

S.O. 2337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2007) of the Central Government Industrial Tribunal/Labour Court, Guwahati now is shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Vijaya Bank and their workman, which was received by the Central Government on 30.09.2013.

[No. L-12012/108/2006-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI, ASSAM.

Present : Mr. L.C. DEY, M.A., LL.B.,

Presiding Officer,

CGIT-Cum-Labour Court, Guwahati

Ref. Case No. 06 of 2007

In the matter of an Industrial Dispute between:—

The Management of Vijaya Bank, Regional Office,
Guwahati.

Versus

Their Workmen Shri Shyamal Kumar Lodh.

APPEARANCES

Management representatives :

Mr. D. Banerjee, Probationary Manager (Law)

Workmen representative :

None appeared

Date of Award: 20.09.2013

AWARD

1. This Reference case has been initiated, on an Industrial Dispute existed between the employer in relation to the Management of the Vijaya Bank and their workman Sri Shyamal Kumar Lodh, which was referred to by the Ministry of Labour & Employment, Government of India,

New Delhi *vide* their letter No. L-12012/108/2006-IR(B-II), dated 28.05.2007 in respect of the matter specified in the Schedule which is mentioned below:

SCHEDULE

“Whether the action of the management of Vijaya Bank in dismissing Shri Shyamal Kumar Lodh from service w.e.f. 30.08.1996 is legal and justified? If not, what relief is Shri Lodh entitled to?”

2. After registration this Reference notices were served upon the workman and the Management directing them to exchange their copies of written statement and document between them. Accordingly the Management appeared and submitted their W.S. with a copy to the workman. The workman appeared and submitted petition u/s 36(3), 36(4) of the I.D. Act, 1947 with prayer for restraining the Management from engaging legal practitioner and the said petition was allowed bearing both the sides. Thereafter the workman submitted a petition on 22.11.07 for staying of this proceeding stating that during pendency, of the Misc. Case No. 6/95 before the Labour Court, Assam, Dibrugarh, the Management Vijaya Bank had dismissed the workman *vide* order dated 30.8.96. The workman challenged the said order of dismissal dated 30.8.96 before the Labour Court u/s 33(A) of the I.D. Act, 1947 and accordingly the petition was allowed by the learned Labour Court, Dibrugarh *vide* its order dt. 18.9.96 in Misc. Case No. 9/97 staying the order of dismissal as aforesaid. While the Management, during the pendency of the Misc. Case No. 6/95 stopped payment of subsistence allowance of the workman, and challenged the jurisdiction of the Labour Court, Dibrugarh to pass the orders dated 18.5.95, 12.6.96, 12.7.95 and 17.10.96 before the Hon'ble High Court by filing Writ Petitions and the Hon'ble High Court by a common judgement passed the order dated 10.1.2007 holding that the learned Labour Court, Dibrugarh was competent and has jurisdiction to pass the aforesaid order. While the Management challenged the aforesaid order dated 10.1.2007 passed by the Hon'ble High Court in Writ Appeal Nos. 381/2001 and 11/2002, before the Hon'ble Supreme Court *vide* SLP(C) No. 7850/2007 and SLP(C) 7851/2007, wherein the Hon'ble Supreme Court stayed the operation of the common judgement and the orders passed by the Hon'ble High Court in the above mentioned Writ Appeal; and hence the workman prayed to stay this proceeding. My learned predecessor upon hearing both the sides allowed the petition and passed order staying further proceeding of this Reference. Subsequently, upon filing a representation by the workman S.K. Lodh to the Desk Officer, In-Charge, I.R.-B-II, Room No. 127, Shram Shakti Bhawan, Ministry of Labour, Government of India, New Delhi-1, for transferring this Reference to the Labour Court, Dibrugarh, the Ministry of Labour and Employment *vide* their letter No. L-12012/108/2006-IR(B-II) dated 11.10.2010 rejected the prayer of the workman holding that

the judgment dated 6.7.2010 in Civil Appeal No. 4211 and 4212 of 2007 passed by the Hon'ble Supreme Court as quoted by the workman in his representation is not connected to the present Reference pending in the CGIT-Cum-Labour Court, Guwahati. Subsequently my learned predecessor *vide* his order dated 17.09.2010 vacated the order of stay of the Reference reviewing the order passed by this Tribunal on 22.07.2008. Thereafter notices were served upon both the parties. Upon which the Management appeared and submitted Addl. W.S. while the workman did not appear and submitted a petition by Post praying for stay of the proceeding which was rejected *vide* order dated 02.05.2011. Again notice was served upon the workman directing him to submit his claim statement and to contest the proceeding *vide* order dated 01.10.2012. On receipt of the said notice the workman sent another representation stating that he was not in a position to appear before this Tribunal nor could engage any lawyer due to non compliance of the order of the learned Labour Court, Dibrugarh by the Management regarding payment of subsistence allowance. In the mean time the Management submitted a petition for hearing of the proceeding *ex parte* on the ground of causing delay by the workman. Accordingly notice was issued upon the workman forwarding a copy of the petition submitted by the Management asking him to appear before this Court and to show cause as to why the prayer for hearing the case *ex parte* should not be granted. The workman acknowledging the receipt of the show cause notice requested for directing the Management to send him the relevant copies of the order dated 7.5.2012, 25.6.2012, 2.8.2012, 6.9.2012, 1.10.2012 and 12.11.2012 passed by this Tribunal. Finding no provision to direct the Management to send the copies of the aforesaid orders passed by this Tribunal the petition of the workman was rejected and once again the workman was given an opportunity to submit his reply/objection, if any, on the prayer for *ex parte* hearing, while the workman submitted his objection petition by post but he did not appear. On persual of the objection filed by the workman and the petition submitted by the Management with prayer for hearing the Reference *ex-parte* & after hearing the Management the prayer of the Management for hearing the reference *ex-parte* was allowed. Hence the case proceeded *ex-parte* against the workman.

3. The case of the Management, in short, as it appears from the Written Statement and the Additional W.S. submitted by them is as follows:

The workman Shyamal Kumar Lodh joined Vijaya Bank as Clerk on 26.07.1982. On 12.08.94 the workman while discharging his duties in cash counter of Vijaya Bank, Tinsukia Branch, accepted Rs. 18,400 at about 12.15 P.M. from the customer named Md. Kurban Ali and subsequently returned the same with shortage of Rs. 2,000 to the customer stating that he would not receive the cash twice in a day to the credit of his Savings Account No. 4342 maintaining at

the said Branch while the said customer came to the Senior Manager, Mr. T. Nazir Ahmed and lodged a written complaint. Then the Branch Manager sent the Assistant Manager Mr. K. L. Sutradhar to the cash counter for enquiry. Accordingly Mr. Sutradhar went to the cash counter while the workman pushed out Mr. K.L. Sutradhar, Asstt. manager from the cabin and locked the door from inside, while Mr. Sutradhar went to the Branch Manager and submitted a complaint against the workman. At about 1.13 P.M. during transaction hour the workman without obtaining permission of the Superior left the cash counter closing the same and returned at about 1.30 P.M., when the Senior Manager asked for explanation from the workman on the allegation received from the customer Md. Kurban Ali and Mr. K.L. Sutradhar, Asstt. Manager. But the workman did not submit any reply to the said letter within 3 days i.e. the stipulated period, then the Senior Manager, reported the matter to Mr. Rabindra Bhandari, Senior Manager, Vijaya Bank, Regional Office, Guwahati, who was entrusted by the Regional Office, Vijaya Bank, Guwahati to enquire into the matter. Accordingly Mr. Bhandari, Senior Manager visited Vijaya Bank, Tinsukia Branch on 16.08.94 and made an enquiry. In course of his enquiry Mr. Bhandari asked the workman to make his statement but the workman refused to comply with the order of the Enquiry Officer while the Enquiry Officer Mr. Bhandari issued a letter to the workman to submit his statement. Then the workman, in reply, submitted a letter before Mr. Bhandari stating that the content of the letter issued by the Senior Manager of Tinsukia Branch dated 13.08.94 differed and contradicted with the letter given by the Enquiry Officer, with request for furnishing the copy of the complaint of the customer, report of the Asstt. Manager, and mentioned that he did not commit any mistake on the alleged date of incident. Mr. Bhandari submitted his report on 19.08.94. On receipt of which the then DGM (RO), Vijaya Bank, Guwahati Mr. K.B. Shetty placed the workman under suspension pending initiation of Disciplinary Proceeding *vide* his order dated 24.8.94. Subsequently on 8.11.94 the Disciplinary Authority issued a charge sheet against the workman framing 5 numbers of charges and the same was served to the workman but the workman did not submit any reply to the show cause as mentioned in the charge sheet thereafter the Disciplinary Proceeding was started by the Management appointing Ranjan Deb, the then Chief Manager of Dimapur Branch as Enquiry Officer.

Thus the action of the workman in accepting the cash amounting to Rs. 18,400 from the customer during business hour and returning the same to the customer stating that he (workman) would not receive the cash twice in a day to credit of the customer's Savings Bank Account No. 4342 maintaining in the said Branch amounts to breach of rule of Bank and hence constitute a minor misconduct within the meaning of sub-clause (d) of Clause 19.5 of Chapter-XIX of the Bipartite Settlement, 1966; retaining

the cash amounting to Rs. 18,400 with pay-in-slip and returning the same to the account holder by the workman after some time with less of Rs. 2000 is an act of gross misconduct within the meaning of sub-clause (j) of Clause 19.5 of Chapter-XIX of the Bipartite Settlement 1966; and the action of pushing Mr. K.L. Sutradhar, Asstt. Branch Manager out of the cash cabin at about 12.35 P.M. on 12.08.94 by the workman in presence of customers and displaying disorderly behaviour constitutes an act of gross misconduct within the meaning of sub-clause (c) of Clause 19.5 of Chapter-XIX of the Bipartite Settlement. Further the action of the workman in not replying Senior Branch Manager's letter dated 12.8.94 and not submitting his written statement on the pretext that there exist difference between the content of letter dated 12.08.94 issued by the Sr. Branch Manager and the letter of Investigating Officer dated 16.08.94 issued to him amounts to willful insubordination and disobedience of lawful and reasonable orders of the official superiors, which constitutes an act of gross misconduct within the meaning of sub-clause (e) of Clause 19.5 of Chapter-XIX of the Bipartite Settlement, 1966; and the action of the workman in closing the cash counter and leaving the branch premises at 1.13 P.M. *i.e.* during the business hours on 12.08.1994 without prior permission of the Senior Officer and returning to the Branch at about 1.30 P.M. Constitutes an act of gross misconduct within the meaning of sub-clause-(j) of Clause 19.5 of Chapter-XIX of the Bipartite Settlement.

The workman choose not to submit his statement of defence on the charge sheet framed against him even after extending him all the reasonable opportunities for verifying the documents/records at the Branches. Accordingly the Disciplinary Authority appointed the Enquiry Officer and the Presenting Officer to conduct the Enquiry into the matter. The workman attended the enquiry on 19.6.95 and denied the charges levelled against and sought for adjournment on medical ground. Subsequently the workman did not participate in the enquiry despite being provided with ample opportunity to do so by way of granting the adjournment to the workman. On completion of enquiry. The enquiry Officer submitted his report dated 11.9.95 holding that all the charges levelled against the workman are substantive and proved. The Disciplinary Authority also after careful consideration of the enquiry proceeding and the evidence placed on record accepted the findings of the Enquiry Officer and proposed to impose the punishment of Dismissal from the service of the bank alongwith other minor punishments with immediate effect which was communicated to the workman and as per the Bank's Service Rule the workman was provided with an opportunity to make his submission against the proposed punishment. While the workman submitted his written submission dated 8.5.96 and after careful consideration of the reply of the workman along with the findings of the Enquiry and other documents, the Disciplinary Authority

imposed the punishment of dismissal from the service of the Bank with immediate effect *vide* order dated 30.8.1996.

In the mean time the workman approached the Labour Court of Assam at Dibrugarh in Misc. Case 6/95 with prayer to direct the Bank not to deduct more than 50% of the loan installments from his subsistence allowance and to release the excess deduction. While the Bank put forth a contention that the State Labour Court of Assam is not having jurisdiction to entertain the application filed by the workman. But the Labour Court, Dibrugarh passed an order dated 19.8.95 holding that it has got jurisdiction to entertain the said application. On being aggrieved by the order passed by the Labour Court, the Management filed Writ Petition No. 3735/95 before the Hon'ble High Court challenging the legality and validity of the order as well as the proceeding, and the said Writ Petition was allowed holding that the Labour Court of Assam has got no jurisdiction to try the subject matter. The workman, on the other hand, challenged the said order by a Writ Petition No. 9381/2001 which was dispose of by the Division Bench of the Hon'ble High Court *vide* order dated 10.1.07 holding that the Labour Court of Assam, Dibrugarh is competent and has got the jurisdiction to try the matter relating to payment of subsistence allowance. The workman filed another Misc. Case No. 9/97 before the Labour Court, Assam with prayer for directing the Management to release the arrear of subsistence allowance in favour of the workman which was allowed by the Labour Court. Then the Management preferred a Writ Petition No. 2771/97 which was allowed by the High Court holding that the Labour Court has got no jurisdiction to try the case. The workman, on the other hand, challenged the said order of the Hon'ble High Court in Writ Appeal No. 11/2002 before the Division Bench of the Hon'ble High Court at Guwahati and the said Writ Appeal was allowed by the Hon'ble High Court by its order dt. 10.1.07 holding that the Labour Court of Assam has got the jurisdiction to adjudicate the matter relating to the payment of subsistence allowance. The Management challenged the above orders dated 10.1.07 in Writ Appeal No. 381/01 and 11/2002 by filing SLP(C) No. 7850 and 7851 of 2007 before the Hon'ble Supreme Court and the Hon'ble Supreme Court was pleased to pass an interim order dated 7.5.2007 staying the operation of the order passed by the Division Bench of the Hon'ble High Court. The workman also filed a Misc. Case No. 9/97 before the Labour Court, Dibrugarh with prayer for staying the order dated 30.8.96 passed by the Disciplinary Authority dismissing the workman from the service and the learned Labour Court, Assam passed an order dated 18.9.96 staying the order of dismissal passed by the Disciplinary Authority. The said order dt. 18.9.96 was challenged by the Management in Writ Petition No. 4960/96 before the Hon'ble High Court, and the Hon'ble Gauhati High Court allowed the same granting liberty to the workman to seek remedy from the competent Authority. Then the workman raised an Industrial

Dispute before the Labour Commissioner (C), Dibrugarh and on failure to settle the dispute, the A.L.C.(C), Dibrugarh referred the matter before the appropriate Government which, in their turn, referred the dispute to this Tribunal for adjudication.

It is pleaded by the Management that the workman has raised the dispute after lapse of 9 years from the date of imposition of punishment, without preferring a departmental appeal against the order of the Disciplinary Authority and without exercising the statutory remedy available to him. Further plea of the Management is that the Vijaya Bank is a Banking Company within the meaning of Section 5 of the Banking Regulation Act, 1949 and Section 2(bb) of the Industrial Dispute Act, 1947 for which the Appropriate Government as per Section 2 (a) of the Industrial Disputes Act, 1947 is the "Central Government"; and as no Notification was issued by the Appropriate Government empowering the State Labour Court, Assam and hence the dispute raised by the workman before the Labour Court, Dibrugarh has no jurisdiction to adjudicate. Further contention of the Management is that the dismissal of the workman from the service of the Bank resulted from the bonafide disciplinary action initiated by the Management of the Bank and hence, the employer-employee relationship between the workman and the Management has been ceased and workman's demand for subsistence allowance is devoid of any merit and justification and as such, the allegation of the workman that he has been illegally dismissed from service of the bank during the pendency of the Misc. Case No. 6/96 is erroneous as the Labour Court Assam, Dibrugarh has no jurisdiction to adjudicate the dispute and the same has been remained inoperative due to the order of the stay passed by the Hon'ble Supreme Court on 7.5.07 in SLP(C) 7850 and 7851 of 2007. The Management in their Addl. W.S. categorically mentioned that the departmental enquiry against the workman was conducted in conformity with the prevailing guidelines and in compliance with the principles of natural justice by according sufficient opportunities to the workman who after attending the domestic enquiry on 19.6.1995 did not attend in the enquiry on the subsequent dates for the reason best know to him, inspite of allowing opportunity to the workman by adjourning the enquiry proceeding twice on 26.5.95 and 10.7.95. Hence, the Management prayed to decide the Reference against the workman as the dispute is bad on account of inordinate delay, laches and is devoid of any merit and justification.

4. In order to establish their averments raised in their W.S./Addl. W.S., the Management examined their solitary witness as MW.1 namely Mr. C.T. Nagaraj, the then Senior Manager, Itanagar Branch of Vijaya Bank ex-parte. In his evidence the Management Witness No. 1 stated that at present he is retired Assistant General Manager, Vijaya Bank and as per the authorization by Dy. General Manager-PER (IRD), Head Office, Bangalore appeared before this

Tribunal for deposition, as he is well acquainted with the facts and circumstances of the case and as he was the Presenting Officer in the departmental enquiry conducted against the workman. He stated that the workman Shyamal Kumar Lodh while working as Cashier at Vijaya Bank, Tinsukia Branch refused to accept the cash amounting to Rs. 18,400/- from the customer named Md. Kurban Ali who offered the Bank to deposit the same against his Savings Bank Account No. 4342, on the ground that the said customer Kurban Ali had earlier deposited an amount of Rs. 32,700/- to the Bank on the same day against his aforesaid Savings Bank Account. The workman accepted the amount at the first instance and returned the amount with shortage of Rs. 2000/-. In the mean time the customer Kurban Ali came to the then Senior Manager Mr. T. Nazir Ahmed and lodged a written complaint alleging that on that day i.e. on 12.8.94 at about 12 noon he had deposited Rs. 32,700/- against his S.B. Account No. 4342 and again at 12.15 hours while he came to deposit another amount of Rs. 18,400/- against the said S.B. Account, he handed over the cash amount with proper details on pay-in-slip to the workman who accepted the same amount and kept the same money in his lower drawer and later on the workman returned the money with shortage of Rs. 2000/- saying that he could not credit the money in the account of the customer Kurban Ali for the second time. Then his brother requested the cashier to accept the money but failed. When Kurban Ali discovered shortage of 4 Nos. of Rs. 500/- denomination the workman came out and checked the customer Kurban Ali and his brother but found no money with them. Then the customer Kurban Ali came to report the matter to the Senior Branch Manager. In the mean time the workman came out of his cabin and entered into the bath room after sometime he returned when the Senior Branch Manager sent the second Manager to the counter of the workman for enquiry. Then the second Manager came and wanted to ask the workman while the workman pushed him out of the cabin and locked the door from inside and this incident was witnessed by the customers. Thereafter the second Manager and the customer Kurban Ali went to the Manager and explained the incident. The MW.1 has proved his authorization *vide* Exhibit-1, Identity *vide* Exhibit-1(1) and the complaint submitted by the customer Kurban Ali *vide* Exhibit-2 and Exhibit-2(1) which is the translated version of the complaint. The Asstt. Manager Mr. K.L. Sutradhar also submitted a written complaint *vide* Exhibit-3 before the Senior Manager alleging that as per the direction of the Senior Manager while he attempted to enter into the cash counter the workman resisted him and pushed him out of his chamber showing his anger and temper. Thereafter the Senior Manager asked for explanation from the workman on the complaint received from the customer Kurban Ali and Mr. K.L. Sutradhar, the Asstt. Branch Manager, *vide* Exhibit-4. But the workman did not submit any reply to the said letter within the stipulated period of 3 days while the Senior Manager reported the matter to the Regional Office,

Vijaya Bank, Guwahati. Accordingly Mr. R. Bhandari, Senior Manager, Regional Office was deputed to enquire into the matter. Mr. Bhandari visited the Vijaya Bank, Tinsukia Branch on 16.8.94 and made an enquiry and on completion of enquiry submitted his report on 19.8.94 *vide* Exhibit-5. In course of enquiry on asking the workman refused the Enquiry Officer Mr. Bhandari to make his statement and to comply with the order of the Enquiry Officer, while the Enquiry Officer issued a letter asking the workman to submit his statement. Then the workman in reply submitted a letter before the Enquiry Officer Mr. Bhandari stating that the content of the letter issued by the Senior Manager of Tinsukia Branch dated 13.8.94 (Exhibit-17) differed and contradicted with the letter given by the Enquiry Officer, and requested the Enquiry Officer for furnishing the copies of the complaints filed by the customer and the Asstt. Manager *vide* Exhibit-6. The Enquiry Officer submitted his report before the then Dy. General Manager, Regional Office, Guwahati Mr. K.B. Shetty, who on receipt of the enquiry report marked as Exhibit-5 placed the workman under suspension pending initiation disciplinary proceeding *vide* his order dated 24.8.94 (Exhibit-7). Subsequently the Disciplinary Authority issued charge sheet on 8.11.94 against the workman *vide* Exhibit-8 framing 5 numbers of charges and the same was served to the workman but the workman did not submit any reply to the show cause as mentioned in the charge sheet. Thereafter the Disciplinary proceeding was initiated by appointing Ranjan Deb, the then Chief Manager, Dimapur Branch as Enquiry Officer *vide* Exhibit-9 and Presenting Officer Mr. C.T. Nagaraj, (MW.1) *vide* Exhibit-10. Accordingly the enquiry was started. The witness concerned has proved the letter dated 12.8.94 submitted by the then Asstt. Manager namely N.S. Kuntoji, G.C. Biswas and H. Suresh Chandra Hegde, L.R.P. Mawiwa, Probationary Officer *vide* Exhibit-13. Wherein the above mentioned persons jointly made the statement about the incident took place on 12.8.94. He has proved the letter dated 12.8.94 issued by the then Arm Guard of Vijaya Bank namely Upen Saikia *vide* Exhibit-14, and the explanation asked for from the workman by the Senior Branch Manager *vide* Exhibit-15. M.W.1 also proved the documents *viz.* the letter dt. 16.8.94 issued by the Investigating Officer Mr. R. Bhandari asking the workman to submit the written statement *vide* Exhibit-17; extract of the Attendance Register for the month of August, 1994 in respect of the Vijaya Bank, Tinsukia Branch *vide* Exhibit-19; the statement of Account in respect of the customer Kurban Ali for the period from 6th July, 1994 to 13.8.94 in respect of his S.B. Account No. 4342 *vide* Exhibit-20; an extract from the movement register of the staff of Vijaya Bank, Tinsukia Branch, pertaining to the period with effect from 1.8.94 to 16.8.94 marked as Exhibit-21; the saving Bank pay-in-slip in respect of S.B. Account No. 4342 of Md. Kurban Ali *vide* Exhibit-23; and Exhibit-24, Exhibit-24(1), 24(2), 24(3), 24(4), 24(5), 24(6), 24(7), 24(8) the statements of Upendra Chandra Saikia, L.R.P. Maiwa, Prabir Karmakar, H.P. Mazumder, Md. Ahshan Ali, Subrata Dutta,

G.C. Biswas, H.S.C. Hegde, N.K.S. Kuntoji respectively. The Management witness No. 1 has again proved the proceeding of the enquiry held on 19th and 20th June, 1995 and on 10.7.95 against the workman *vide* Exhibit-25 *vide* Exhibit-26 and Exhibit-27. He has also proved the letter dated 19.7.1994 submitted by the Assistant Manager, Vijaya Bank, Tinsukia Branch, to the Branch Manager informing the incident regarding putting of signature in the Attendance Register by the workman. He further proved the letter No. OR: TNA: 94 dated 7.7.1994 issued by the Senior Branch Manager, Vijaya Bank, Tinsukia Branch addressing the Assistant General Manager, Guwahati narrating the insubordination of the workman; the office note regarding punctuality, discipline and movement policy in respect of the Officer and Staff of Vijaya Bank, Tinsukia Branch issued by the Senior Branch Manager which was circulated to all the Officer and staff of the Branch wherein the workman did not sign unless he was supplied with a copy of the same *vide* Exhibit-30; the letter dated 8.7.1994 issued by the then Senior Branch Manager, Vijaya Bank, Tinsukia Branch address to Sri S.K. Lodh regarding his disobedience, unpunctual and irregular attendance and unauthorized absence from the duties which is marked as Exhibit-31; the letters dated 9.7.1994 and 11.7.1994 issued by the then Senior Branch Manager to the Assistant General Manager, Regional Office, Guwahati regarding misconduct, disobedience, non-completion of allotted work, unpunctual and irregular attendance, unauthorized absence from duties *vide* Exhibit-33 and Exhibit-34 respectively; the letters written by the workman addressing the Branch Manager, Vijaya Bank, Tinsukia Branch at different time *vide* Exhibit-35, Exhibits-35(1), 35(2), 35(3), 35(4), 35(5) and 35(6) respectively. The M.W. 1 has proved the letter dated 13.7.94 written by Sri D. Bhattacharjee, Clerk, Vijaya Bank, Tinsukia Branch narrating the episode took place on 13.7.94 at 10 A.M. in the office of the Vijaya Bank, Tinsukia Branch while he went to put his signature on the Attendance Register at that time the workman asked the Manager to supply the Attendance Register to his (workman) table so that he could put his signature thereon, *vide* Exhibit-36; the letter dated 13.7.94 addressed to the workman informing about his unpunctuality and indiscipline in due discharge of his duty *vide* Exhibit-37; the letter dated 19.7.94 issued by the Senior Branch Manager, Vijaya Bank, Tinsukia Branch asking the workman to produce any unqualified medical certificate and also pointing out the fact that the workman put his signature on the Attendance Register on 19.7.94 by force ignoring the direction; the proceedings of enquiry conducted on 12.7.95 against the workman *vide* Exhibit-39; the letter dated 12.7.95 written by the MW. 1 himself as Presenting Officer forwarding all the documents related to the enquiry proceeding, which were issued to the workman by Registered Post with A/D *vide* Exhibit-40 and Exhibit-40(1) the A/D which were returned after service; the letter issued by the Enquiry Officer Mr. R. Deb to the workman forwarding the proceeding of exparte proceeding

and asked him to submit his written brief, if any, within 30 days giving him an opportunity *vide* Exhibit-41; the written brief on the departmental enquiry held against the workman prepared by the M.W. 1 himself *vide* Exhibit-42 which was forwarded to the workman *vide* Exhibit-43 whereupon Exhibit-43(1) is his signature.

The M.W. 1 further stated that the final report (Exhibit-44) on the enquiry held by Mr. R. Deb, Enquiry Officer and the findings on the enquiry proceeding was forwarded to the workman *vide* Exhibit-41 & 43, upon which the workman submitted letter dated 24.2.95 before the Disciplinary Authority denying all the charges and prayed for granting subsistence allowance *vide* Exhibit-45. Then the Disciplinary Authority proposed punishment against the workman *vide* Exhibit-46 and on receipt of the said letter (Exhibit-46) the workman submitted a petition dated 4.4.96 with prayer for allowing him 45 days time to file his reply/objection in details and also supplying a copy of the official notification about the Bank nomination to the Office of the Disciplinary Authority to enable him to submit his reply/objection *vide* Exhibit-47. Then the Disciplinary Authority *vide* letter No. ZOC:DAC:PKK: 10410:96 dated 12.4.96 rejecting the prayer for time for 45 days directed the workman to submit his representation within 10 days *vide* Exhibit-48, while the workman submitted his representation *vide* Exhibit-49. Thereafter Sri B. Derna Rai, Deputy General Manager, Disciplinary Authority, Vijaya Bank, Zonal Office, Kolkata prepared a final proceeding in the matter of Disciplinary proceeding against the workman including the details and final report of the proceeding against the workman together with the final order imposing of punishment *vide* Exhibit-50 (in 35 pages).

5. On careful scrutiny of the pleading as well as the evidence adduced by the Management of Vijaya Bank, along with the documents it appears that the workman S.K. Lodh was working as Cashier at Vijaya Bank, Tinsukia Branch and on 30.8.96 he was dismissed by the Management of Vijaya Bank after holding a departmental enquiry and finding the following charges proved against the workman:

- (a) on 12.8.94 at about 12-15 P.M. the workman accepting the cash amount of Rs. 18,400/- from the customer namely Md. Kurban Ali but returned the same to the customer stating that he would not receive the cash twice in a day to the credit of the S.B. Account of Customer Kurban Ali, which amount to breach of rule of business of the Bank and hence constitutes minor misconduct within the meaning of sub-clause (d) of Clause 19-7 of Chapter XIX of the Bipartite Settlement, 1966.
- (b) The workman accepting the cash amounting to Rs. 18,400/- along with the savings bank pay-in-slip dated 12.8.94 from the customer Md. Kurban Ali on 12.8.94 and retaining the same amount in

the cash counter for a while and subsequently returned the amount to the customer with shortage of 4 currency notes of Rs. 500/- denomination *i.e.* total of Rs. 2,000/- tantamount to exhibiting lack of integrity thereby tarnishing the image of the bank.

- (c) The workman pushed out of the cash cabin Mr. K.L. Sutradhar, Assistant Branch Manager of Tinsukia Branch at about 12-35 PM on 12.8.94 in presence of the customers of the bank, with warning not to enter his cash cabin without permission which amounts to displaying disorderly behaviour in the premises of the bank and belittling the personality of the Asstt. Branch Manager and hence, constitute a gross misconduct.
- (d) The workman did not reply to the Senior Manager's letter dated 12.8.94 nor did he submit his written statement to the Investigating Officer during the period of investigation into the incident took place at the Tinsukia Branch with regard to the allegations made against the workman, on the pretext that there exist some difference in the contents of the letter No. OR:TNA:LD:No. 795:94 dated 12.08.94 of the Investigating Officer issued to the workman, which amounts to willful insubordination and disobedience of lawful and reasonable orders of the official superior, constitutes a gross misconduct and,
- (e) The action of the workman is closing the cash counter leaving the Branch premises on 1-13 P.M. *i.e.* during the business hours on 12.8.94 without taking prior permission of the Senior Branch Manager, Asstt. Manager of the Branch and returning to the Branch at about 1-30 P.M., amounts to dereliction of duty, which is prejudicial to the interest of the bank and hence, constitutes a gross misconduct.

6. The vital and material point before this Tribunal is to determine whether the Management has committed any illegality, irregularity and violated the principles of Natural Justice in holding the enquiry proceeding as well as in imposing punishment of dismissal against the workman.

From the record of Enquiry Proceeding (Exhibit-11, Exhibit-25, Exhibit-26, Exhibit-27, and Exhibit-39) it appears that Md. Kurban Ali, the holder of Savings Bank A/c No. 4342 of Vijaya Bank, Tinsukia Branch submitted a complaint *vide* Exhibit-2(1) before the Branch Manager of Vijaya Bank, Tinsukia Branch on 12.8.94 alleging that on that day at about 12 noon he had credited Rs. 32,700/- to his S.B. Account No. 4342 and again at 12-15 P.M. when he came to the Bank to credit Rs. 18,400/- to his account he handed

over the cash with proper details of notes on a pay-in-slip to the cashier who has taken the amount and kept the same in his counter; and later on the said cashier returned the money with shortage of Rs. 2000 (Rs. 500 denomination) saying that he could not credit the money in the same account second time and on asking about the shortage of Rs. 2000 by Md. Kurban Ali the workman came out of his counter and checked him along with his brother but they did not have any money with them which was missing. Then he went to report the matter to the Manager and by that time the Cashier had already come out of his cabin and went to the bath room. On return of the cashier from the bath room the Manager sent the Second Manager to the cashier counter for enquiry and then Mr. K.L. Sutradhar, Asstt. Manager went to cash counter and wanted to ask the cashier while the cashier pushed out the Second Manager from his cabin and locked up the door from inside thereafter the customer along with his brother and the Assistant Manager went to the Sr. Branch Manager and explained the incident took place with them as well as with the Second Manager. He submitted written complaint. The Assistant Manager Mr. K.L. Sutradhar also submitted complaints before the Senior Branch Manager, Vijaya Bank, Tinsukia Branch on 12.8.94 alleging that as per the instruction of the Senior Manager he went to enquiry about the happenings in the cash counter of the workman with the customer Kurban Ali and to check the cash *i.e.* cash shortage and refused to receive cash twice in a day, while the workman raised from his seat and angrily pushed the Assistant Manager out of the cash cabin in front of the customer standing in the counter and warned him not to come again in the cash cabin without his prior permission for which he ashamed and felt insulted and insecured *vide* Exhibit-3. Thereafter the Senior Branch Manager, issued notice asking the workman for explanation within three days from the date of issue of this letter *vide* Exhibit-4 but the workman did not submit any reply to the said notice after expiry of the stipulated period. Then the Senior Manager referred the matter to the Regional Office, Vijaya Bank, Guwahati which entrusted Mr. R. Bhandari, Senior Manager to investigate the matter and accordingly Mr. Bhandari went to Tinsukia Branch and started enquiry. In course of his enquiry, the workman was asked to submit his statement but he refused to do so while Mr. Bhandari issued a letter asking the workman to submit his written statement *vide* Exhibit-17. The workman in turn wrote letter to Mr. Bhandari, Senior Manager with request to supply him with the copies of complaint letter submitted by Md. Kurban Ali and the report of Mr. K.L. Sutradhar, Assistant Branch Manager. On completion of enquiry Mr. R. Bhandari submitted his report on 19.8.94 *vide* Exhibit-5. On receipt of report submitted by Mr. R. Bhandari the Disciplinary Authority *vide* their letter dated 24.8.94 placed the workman under suspension *vide* Exhibit-7 with immediate effect and initiated the enquiry proceeding. Accordingly charge sheet was framed against the workman *vide* Exhibit-8 and Mr. R.

Deb, Chief Manager, Vijaya Bank, Dimapur Branch and Mr. C.T. Nagraj, Manager, Vijaya Bank, New Itanagar Branch as Enquiry Officer and Presenting Officer respectively *vide* Exhibit-9 and Exhibit-10. The charge framed against the workman was supplied the workman but the workman did not submit any reply to show cause as mentioned in the charge sheet. In course of enquiry proceeding the Presenting Officer Mr. C.T. Nagraj forwarded all the relevant documents to the workman *vide* Exhibit-40 which was received by the workman *vide* Exhibit-40(1). On completion of enquiry ex-parte, the Enquiry Officer forwarded the enquiry proceeding *vide* Exhibit-11 and Exhibit-26 held on 10.7.95, 11.7.95 and 12.7.95 at Vijaya Bank, Tinsukia Branch to the workman by Registered Post, asking the workman to submit his written brief, if any within 30 days from the date of issue of the letter dated 12.7.95 (Exhibit-41). The Presenting Officer also forwarded his written brief regarding the departmental enquiry to the workman *vide* Exhibit-43. But the workman did not submit any written brief/comment on the enquiry. After perusing the entire proceeding along with the statements of the witnesses recorded at the time of enquiry proceeding and the documents produced by the Presenting Officer, Enquiry Officer submitted the enquiry report and the findings *vide* Exhibit-44.

7. On careful consideration of the enquiry proceeding along with its findings *vide* Exhibit-44 (in 6 pages) it is found that the proceeding of the departmental enquiry was started on 19.6.95 and on that day the workman was present and faced the enquiry which was adjourned till 20.6.95. But due to absence of the workman on 20.6.95 the enquiry proceeding was again adjourned till 10.7.95 and notice was also issued upon the workman but he did not attend the enquiry on 10.7.95. Hence the Enquiry Officer proceeded with the enquiry in absence of the workman and recorded the statements of Management witnesses namely (1) Mr. Rabindra Bhandari who hold the preliminary enquiry, (2) Mr. Hari Prasanna Mazumder, Clerk working at Tinsukia Branch, Vijaya Bank; (3) Subrata Dutta, Clerk of Tinsukia Branch; (4) Mr. Upen Chandra Saikia, Armed Guard, who was working at the Tinsukia Branch at the relevant time; (5) Md. Kurban Ali, the account holder of Saving Bank Account No. 4342 of Vijaya Bank, Tinsukia Branch; (6) Mr. K.L. Sutradhar, the then Assistant Branch Manager, Tinsukia Branch of the Management Bank, (7) Mr. Suresh Chandra Hegde, Assistant Manager, Tinsukia Branch, (8) Mr. G.C. Biswas, Assistant Manager, Vijaya Bank, Tinsukia Branch; (9) Mr. T. Nazir Ahmed, Senior Branch Manager, Vijaya Bank. On perusal of the statement of the witnesses as aforesaid it appears that the witness No. 5, Kurban Ali and Witness No. 6, Mr. K.L. Sutradhar, the then Assistant Branch Manager, Vijaya Bank, Tinsukia Branch, who lodged the written complaint against the workman Sri S.K. Lodh regarding the incident took place on 12.8.94 *vide* Exhibit-2/2(1) and Exhibit-3 respectively before the Senior Branch Manager; had categorically narrated the details of the

incident corroborating their earlier statements made in the written complaint as well as the statements made before the Investigating Officer, Mr. R. Bhandari, in course of preliminary enquiry. The witness No. 1, Mr. R. Bhandari has also proved the contents of his report on preliminary investigation, in course of making his statement before the Enquiry Officer. The witness No. 3, Sri Subrata Dutta, clerk also supported the contents of the complaint raised by the account holder Kurban Ali. The Management witness No. 4, Sri Upendra Chandra Saikia, Armed Guard, categorically narrated the story before the Enquiry Officer stating that at the time of occurrence he was present at the gate of the Bank and on hearing altercation between the workman S.K. Lodh and the customer he came to the spot while the customer complained that he handed over to the workman an amount of Rs. 18,400 to deposit the same in their account and after some time the workman returned the money with a short of 4 numbers of notes of Rs. 500 denomination, and on query by customer the workman came out of his cabin and searched the pockets and bags of the customer and found nothing. Then he advised the customer to meet the Senior Branch Manager. The witness No. 7 Mr. H. Suresh Chandra Hegde, Asstt. Manager, Vijaya Bank, Tinsukia Branch in course of the enquiry stated that on the fateful day while he was discharging his duties in the Branch he witnessed the discussion between the workman and one customer outside the cash counter in presence of the Armed Guard, Sri Saikia, then he called Saikia who reported him the customer was complaining that there was a shortage on some cash amount. In the mean time the customer went to the Senior Branch Manager's cabin while the Senior Branch Manager instructed Mr. Sutradhar to find out the fact while Mr. Sutradhar entered inside the cash counter and immediately came out with a very dull face and on asking, Mr. Sutradhar told Mr. H.S.C. Hegde that when Mr. Sutradhar entered into the cash cabin to find out the shortage as alleged by the customer he was pushed out of the cash cabin by the workman. Mr. Sutradhar also said to Mr. Hegde that the workman would show his political affiliation threatening that he can do anything in Tinsukia, and spoke in a humiliating manner on the reserve community stating that he was not serving under them, and the workman imposed upon his seniority to officers belonging to reserved community resulting in fear psychosis amongst the officers. The witness No. 8, Sri G.C. Biswas, Assistant Manager, Vijaya Bank, Tinsukia Branch, as eye witness to the incident said that he noticed some discussion took place between the workman and Kurban Ali and his man in front of the Armed Guard, Mr. U.C. Saikia who reported that there was discrepancy of Rs. 2000 from the amount which deposited by the customer to the cash counter. At that time he noticed that Mr. K.L. Sutradhar, Assistant Branch Manager went to the cash cabin of the workman while he also went there and at that time the workman pushed out Mr. K.L. Sutradhar out of the

cabin. He also added that the action of the workman on Mr. K.L. Sutradhar was much humiliating and insulting.

The witness No. 9, Sri. T.N. Ahmed, Senior Branch Manager made his details statement before the Enquiry Officer regarding the incident took place on 12.8.94 at about 12-30 P.M. while the customer Kurban Ali went to him and complained that the workman after accepting the cash amount returned the money after a while, saying that the customer had already remitted once during the day and after receiving the amount the customer found shortage of Rs. 2000 of Rs. 500 rupee denomination note. While he entrusted Mr. K.L. Sutradhar, the then Assistant Branch Manager to make necessary enquiry about the complaint of the customer Kurban Ali and to verify the cash with document and after sometime Mr. Sutradhar returned with pale and fearing in his face and reported that the workman had pushed him outside the cash cabin and warned him not to enter into the cash cabin in future. Then Mr. K.L. Sutradhar submitted complaint before the Senior Branch Manager. He also mentioned that the customer also felt insulted for physical search of his pocket and belongings by the workman and the shortfall of Rs. 2000 meanwhile the workman was seen going out of the Branch premises at about 1-13 P.M. without his permission. The workman entered the Movement Register and left office at about 1-30 P.M. he returned but failed to make any entry in the Movement Register as per the procedure being followed at the Branch. He said that the workman left the Bank without any authority and without obtaining prior permission and the Assistant Branch Manager, K.L. Sutradhar was apprehensive of physical harassment and sought for protection. He also said that he issued letter to the workman on 12.8.94 calling for explanation on the incident but the workman did not submit any reply. Thereafter he reported the matter to the Regional Office, Guwahati who deputed Mr. R. Bhandari, Senior Manager, Regional Office, Guwahati to conduct investigation on the incident. Mr. T. Nazir Ahmed also mentioned that he had been noticing that the workman was disobeying the orders of superior, not completing the day to day work allotted to him, loitering the Branch premises during the office hour very much rude and arrogant in his behavior and no improvement was there in the workman in spite of repeated advice given by him. The said witness also narrated some incident took place in the month of July, 1994 when there was shortage of staff he asked the workman to attend the clearing department which the workman refused; and in the month of July, 1994 he issued letter to the workman in this regard. Mr. Ahmed further said that another incident took place regarding signing on the Attendance Register forcibly by the workman and snatching it from the custody of the Assistant Branch Manager ignoring his advice; the workman also refused to sign on the Office Notification issued by Mr. Ahmed. Mr. Ahmed added that prior to the incident the general behavior of the workman was not satisfactory. He has proved as

many as 12 numbers of documents in course of the enquiry proceeding regarding his letter/notice issued by him to the workman and others. Thus it is clear that in course of the proceeding of the enquiry the witnesses have fully proved all the allegations raised in the charges framed against the workman by the Management.

On completion of enquiry the Enquiry Officer submitted his report. It is also found on record that the Presenting Officer submitted his written brief (Exhibit-42) in the departmental enquiry to the workman *vide* Exhibit-43. The Enquiry proceeding was also forwarded by the Enquiry Officer to the workman. The entire proceeding of the enquiry along with relevant documents were forwarded to the workman *vide* Exhibit-40 and Exhibit-41 which was received as it appear from the A/D card marked as Exhibit-40(1). The workman submitted a letter dated 24.2.95 to the Disciplinary Authority denying all the charges and prayed for granting subsistence allowance *vide* Exhibit-45 while the Disciplinary Authority after examining the enquiry proceeding and the findings of the Enquiry Officer proposed punishment against the workman *vide* Exhibit-46 which was forwarded to the workman who, in turn, submitted another petition dated 4.4.1996 with prayer for allowing him at least 45 days time for submission of his reply but the Disciplinary Authority rejected the prayer of the workman and with direction to submit his representation within 10 days *vide* Exhibit-48. On receipt of the reply submitted by the workman *vide* Exhibit-49, the Disciplinary Authority rejected the reply/representation of the workman and preparing the final proceeding on the enquiry came to a conclusion that all the charges framed against the workman have been proved and accordingly punishment was imposed against the workman *vide* Exhibit-50 (35 pages). Accordingly the workman was dismissed from the service of the Bank with effect from 30.8.1996 along with other minor punishment.

8. From my above discussion it is found that the workman was allowed sufficient opportunities to defend himself in the Departmental Proceeding but inspite of having knowledge & getting opportunities the workman has willfully abstained from appearing before the Enquiry Authority. The workman was also supplied with the entire proceeding along with the findings of the Enquiry Officer and the brief of the enquiry submitted by the Presenting Officer and he was given sufficient opportunities to represent himself as to the punishment proposed to be imposed upon him by the Disciplinary Authority. It is also found that the charges framed against him on the allegation raised against the workman regarding the incident took place on 12.8.1994 found to be well established. Beside some other allegations were also raised on the misconduct, unpunctuality, disobedience and some acts against the decorum and discipline as well as the dignity of the employer institution was also found well established. Thus it is crystal clear that there is no irregularity, illegality and violation of

Natural Justice done by the Management of Vijaya Bank in holding the Disciplinary Proceeding against the workman as well in imposing punishment of dismissal from the service of the Bank against the workman is found. In this regard I am inclined to rely upon the decision of the Hon'ble Supreme Court in Lakshmi Devi Sugar Mills Ltd.-vs—Pt. Ram Sarup, wherein it was held "If full and free opportunity was given to the respondents to present themselves at the enquiry and defend themselves it could not be said that the enquiry was anything but fair; no principles of natural justice were violated and the management was at liberty to come to its own conclusions in regard to the culpability of the respondents and also to determine what punishment should be meted out to the respondents for the misconduct and insubordination proved against them."

In Divisional Manager, Plantation Division, Andaman and Nicobar Island—vs—Munnu Barrick and Ors. reported in (2005) 2 SCC 237, wherein it was held that "the principles of natural justice can not be put in a strait-jacket formula; it must be viewed with flexibility; in a given case, where a deviation takes place as regard compliance of the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held."

In State Bank of Bikaner and Jaipur-vs—Nemi Chand Nalwaya, reported in AIR 2011 SC 1931, wherein it was decided that the "Courts can interfere with the finding in disciplinary matters, where principles of natural justice or statutory regulations have been violated or if order found arbitrary, capricious, mala fide or based on extraneous consideration; and loss of confidence in employee, constitutes relevant factor in considering whether punishment of termination from service imposed on Bank employee was shockingly excessive or disproportionate to the gravity of proved misconduct; and the Court shall not act as an Appellate Court and reassess evidence led in domestic enquiry, nor interfere on ground that another view is possible on material on record.

9. In the present reference the Management Bank on receipt of the complaint observing all the formalities initiated the departmental proceeding against the workman and the workman was allowed sufficient opportunities to take part in the enquiry proceeding but he willfully restrained himself from defending him, and hence the proceeding was held ex-parte and finally the charges framed against the workman

were proved. There is also nothing to show that the enquiry was held and concluded and the finding arrived at in violation of principles of law and natural justice. Further the act of the workman has affected the dignity and reputation of the Bank and in derogation of the order and discipline of the employer which constitute gross misconduct on the part of the workman.

10. Considering the facts and circumstances of the case and having regard to the discussion and my findings as above and having regard to the ratio of the cases of the Hon'ble Supreme Court as mentioned above, it can safely be held that there is no illegality, irregularity and violation of natural justice in holding departmental enquiry as well as arriving at the findings of the enquiry and the imposition of the punishment of dismissal from service of the workman Sri Shyamal Kumar Lodh by the Management of Vijaya Bank. As such, I find no scope to interfere with the punishment imposed by the management.

11. In the result, this Reference is answered ex-parte in negative against the workman. As such, the workman is not entitled to any relief.

Send the Award to the Government as per procedure.

Given under my hand and seal of this Court on this 20th day of September, 2013 at Guwahati.

L.C. DEY, Presiding Officer.

नई दिल्ली, 4 अक्टूबर, 2013

का.आ. 2338.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 02/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/09/2013 को प्राप्त हुआ था।

[सं. एल-12012/76/2008-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th October, 2013

S.O. 2338.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 02/2009) of the Central Govt. Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on 30/09/2013.

[No. L-12012/76/2008-IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present : SHRIL.C. DEY, M.A., LLB.,
Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

In the matter of an Industrial Dispute between:

The Management of Bank of Baroda, Regional Office,
Bhangagarh, Guwahati.

Versus

Their Workman Sri Rajani Kalita, Canteen Boy.

Ref. Case No. 02 of 2009.

APPEARANCES

For the Management : Mr. N. Goswami, Advocate.
Mr. B. Goswami, Advocate.

For the Workman : Mr. A. Sarmah, Advocate.

Date of Award : 30.08.2013

AWARD

1. This Reference Case has been initiated on an Industrial dispute raised between the Management of Bank of Boroda, Regional Office, G.S. Road, Bhangagarh, Guwahati, Assam and its workman Sri Rajani Kalita Canteen Boy, which was referred by the Ministry of Labour & Employment, Government of India, *vide* their Order No. L-12012/76/2008-IR (B-II); Dated: 06/02/2009. The Schedule of the Reference is as under:

SCHEDULE

“Whether the action of management of Bank of Boroda in terminating the services of Shri Rajani Kalita, Canteen boy instead of regularizing him is legal and justified? To what relief the workman is entitled to?”

2. The case of the workman, in short, as it appears from his claim statement, is that the workman Rajani Kalita was engaged by the Management of Bank of Boroda as Canteen Boy from September, 1987 and the canteen was run by the Management through a Committee where representative of the Management and the employees were there and the Management supplied cooking utensils, chairs and tables, eating dishes, gas and remuneration to the cooks. The workman appeared in the interview conducted by the Management in July, 1987 for selection to the post of Grade-IV employees but he was not appointed against Grade-IV Post but as a Casual in the Canteen and he was initially paid a daily wage of Rs. 25 with successive rise up to Rs. 35, Rs. 40 and lastly in 1995 to Rs. 50 and thereafter his engagement was discontinued. His condition

of service was that he did not get weekly off wages, medical leave while the other two casuals in the canteen were given weekly off wages, annual bonus, etc. In the year 2001 the workman suffered in an accident while going to the house of the cashier on official duties, he was laid off for 4 months without any wages nor the cost of medical treatment as allowed to him. Subsequently, on 28.4.2008 the workman was told not to do any work in the Canteen as the Canteen was closed. Thus it was a case of refusal to employ and therefore refreshment within the meaning of Section 2(oo)/25F, of Industrial Dispute Act. The Management did neither issued the notice nor paid notice wages and also no compensation. Hence, the Management applying the hire and fire, the workman was disengaged in violation of law. Thus the workman prays for relief of reinstatement with full back wages.

3. The Management, on the other hand submitted written objection stating *inter-alia*, that the Central Government has made this Reference assuming certain facts which did not exist as the order of Reference shows that the order of Reference the Government has decided the employer-employee relationship existing and there was a termination but it is factually incorrect. Hence, the Reference has been made mechanically without any application of mind and without considering the relevant materials. As such, the order of Reference is bad in law as well as void abinitio and has no legs in the eye of law. The claimant has not been appointed by the Bank therefore question of termination does not arise. The Management mentioned that the workman has not come with clean hand and suppressed the relevant and material fact; and the employment of the claimant as well as the alleged termination were not admitted and highly disputed question and this disputed question could not be decided by the Central Government in terms of the decision of the Hon'ble Supreme Court in the case of Irrigation Karmachari Sangh reported in AIR 1985, SC 960. The Management further pleaded that the reference shows that the Central Government usurped the authority by deciding that material fact this again without jurisdiction and hence, the Reference is totally misconceived. The Management without prejudice to the above mentioned preliminary objection submitted their replies against the claim statement submitted by the workman which are as follow:—

1. That the application of the workman is not based on truth and as such the same is liable to be rejected. The Management save and except what are specifically, admitted, all other statements made by the workman denied stating that the Management did never engage the workman in its Canteen as Canteen Boy from 1987 and the Bank has no obligation to run a canteen or to provide canteen facilities to its staff members. However, the facility of providing tea, snacks etc. to other members was in existence at certain Branches for which utensils are to be provided by the Bank, such canteen used to be managed by the

Committee of staff members working at the respective branch and the canteen and canteen boy system wherever it existed have been stopped/discontinued in terms of Tripartite settlement dated 20.02.2008. The Management further stated that there is no record of the Management in any of the Branch calling Sri Kalita the workman for interview, and hence, the question of appointing the workman does not arise as he was not called for interview at any point of time. The workman used to supply water, etc. for Guwahati (M) Branch of the Bank during the period of 15.05.1995 to 10.05.2001 intermittently as and when required for which he was paid contractual amount in cash, and he was never officially engaged by A.T. Road Branch as such, his name does not appear in the salary register. On casual occasion as per contingencies and needs of the Branch Sri Kalita has worked in the Canteen of A.T. Road Branch on ad hoc basis for odd Jobs, such as, carrying, supplying water, etc. and payment was made to him through pay cash vouchers according to the job done and as he was not an employee of the Bank extension of benefits to him does not arise. The Management also denied the Statements of the workman that he met an accident in the year 2001 while he was going to the house of the Cashier on official duty.

The Management averred that when a person is engaged on daily wage, the contract of engagement service begins in the morning and comes to an automatic end at the end of the day and such engagement did not get any employer employee relationship, such disengagement of the claimant can not be termed as retrenchment within the meaning of Section 2(oo) (bb) of the I.D. Act. The Management said that the Bank is having definite rule for appointment of sub-staff and a person who is engaged on temporary basis as a stop gap arrangement without following the laid down procedure and that too by an authority who has not been authorized to recruit any person including temporary employee, would not get appointment on regular basis. Further any claim for regularization dependent upon the laid down eligibility criteria *i.e.* the candidate has to be duly sponsored by Employment Exchange and is fulfilling the prescribed criteria of educational qualification and age. It is further mentioned that if the Bank is directed to consider the appointment of the workman who was not selected under the rules then he would get the benefit of being appointed to the post without the due qualification or without facing any competition from eligible candidates and against the enhanced principles of equal opportunity for all which would be highly illegal and invalid. In this connection the Management relied upon the judgement delivered in Secretary, State of Karnataka and other-vs-Umadevi and ors. reported.

Further plea of the Management is that on 20.2.2008 the Management has entered Tripartite Settlement under Section 12(3) of Industrial Dispute Act, 1947 with the Award

Staff Union before the ALC (C), Kolakta in the matter of abolition of Canteen Boys System in Bank's Eastern Zone and Bihar-Orissa and Jharkhand Zone and absorption of casual/temporary Canteen Boys. In terms of the said tripartite Settlement all temporary/casual Canteen Boys who have been found to be eligible for absorption in Bank's service have already been absorbed in the Bank Service but the workman never engaged/appointed as Canteen Boys at any of the branches of the Bank as is evident from the fact that his name is not appearing in the list of temporary/casual person to be considered for absorption under the Tripartite Settlement. Under the above circumstances and Management prayed to dismiss the claim of the workman as he is not entitled to any relief.

2. The workman by filing Addl. Claim statement stated that the objection filed by the Management are poor and unsustainable in law as well as fact as the Reference is made mechanically and without application of mind. He categorically mentioned that his name was sponsored by the Employment Exchange and he was informed by the Employment Exchange the date of interview. Accordingly he went to the bank and the officials of the Bank while checking his card retained it and he was interviewed but not selected for any Grade-IV Post, and engaged him as casual without any appointment letter, wage rate and other terms and conditions of engagement in the canteen. He also denied that he was engaged as Paniwala occasionally. His engagement was continuous without any break since he joined as Canteen Boy in September, 1987 and there existed employer-employee relationship and he rendered continuous service for 21 years 7 months in the Management Bank. According to the workman it is not correct to say that his case falls in one of the excepted clauses of Section 2(o) 1, 1 Act, 1947; and he was perfectly healthy, young in age and there was no valid cause of refusal of his employment by the Management. He also said that he was not serve with any notice nor one month's wage in lieu of notice and compensation @ 15 days wages for every year of service exceeding six months. He again said that his attendance was maintained by the Head Peon of A. T. Road Branch of Bank of Boroda in the Postage Register.

3. During the pendency of the proceeding the workman examined himself alone while the Management examined 2 witnesses and at the stage of cross-examination of the Management witness No. 2 the workman submitted Petition No. 563/13 dated 21.8.2013 stating that his daughter Smt. Jumi Kalita appeared before the Management for a job for Grade-IV Post and there is a good chance of her appointment and as such, he is not willing to proceed further and prayed for adjournment. Subsequently by another petition No. 646/13 dated 30.8.2013 the workman prayed for allowing him to withdraw the case in order to demise the dispute between the workman and the Management for the sake of betterment of his daughter's appointment/

service. The workman also submitted a copy of the appointment letter issued by the Management and the joining report submitted by his daughter Smt Jumi Kalita. In this connection statement of the workman has been recorded on oath, wherein the workman stated that he was working in the Bank of Baroda as daily worker and due to his discharge from service he raised this dispute which was referred by the Ministry; and during the pendency of this reference he amicably discussed with the Management of the Bank of Baroda and in the mean time his daughter Smt. Jumi Kalita appeared before the Interview for the post of part time Sweeper in the bank of Baroda and she came out successfully and accordingly she was appointed as part time Sweeper for a period of six months against regular vacancy. He also mentioned that his daughter had already joined in her service on 24.8.2013, and as his daughter has been appointed and has been working in the bank of Baroda under the Management he is not inclined to proceed with the case further. As such the workman is willing to withdraw the case in order to cut the root of the dispute. Henceforth, he shall have no any claim on this Reference.

4. The workman Rajani Kalita, in his Evidence-in-Affidavit stated that he was engaged as Canteen Boy by the Management of the Bank of Baroda as casual in 1987 and since then he continued to service as Canteen Boy; and initially he was given remuneration of Rs. 25/- with successive rise to Rs. 35/-, Rs. 40/- and Rs. 50/-. He was engaged as monthly paid daily rated worker through voucher and his attendance was recorded which was maintained by the Head Peon of the Bank in the Postage Register which are in the possession and power of the A.T. Road Branch of the Bank. He also added that he was not engaged by any written order and as this engagement was a oral with effect from 20.4.2008. On the plea that the Canteen was closed. He submitted that since he rendered continuous service for 20 years 7 months 5 days one month's written notice of disengagement was required to be served on him or wages for one month in lieu of notice and compensation at 15 days wages for every completed year of service or part thereof exceeding six months be paid. But the Management did not issue any notice nor did pay notice pay and compensation before his disengagement.

During his cross-examination the workman stated that he was a casual employee under the Management and payment was made on weekly basis through cash vouchers. While he has specifically stated that in para-4 of his claim statement that the payment was made on daily basis. He categorically denied the suggestion tendered by the Management that no interview took place before his appointment, nor any Attendance Register was maintained in Postage Register from September, 1987 to 20.4.2008.

5. The Management Witness No. 1, Shri Ladu Kishore Behera in his evidence mentioned that he was a Senior

Manager, HRM, Regional Office, Bank of Baroda, G.S. Road, Guwahati and he was dealing with the present case as he was conversant with the same and on being duly authorized by the Management he had adduced the evidence. He categorically mentioned that the workman was not been appointed by the Management and there is no relationship of employer-employee. The Management witness No. 1 said that the workman was not appointed as Canteen Boy from September, 1987 as the bank has no obligation to run and maintain or provide canteen facility to its staff members and the canteen used by the staff used to be management by the committee of staff members working at the respective branch. As per a Tripartite Settlement dated 20.2.2008 the canteen system and the system of canteen boys, where it existed, has been stopped and discontinued in terms of Tripartite Settlement dated 20.2.2008. There is also no record of the Management that the workman was called for interview and appointed him as casual in the Canteen and the question of appointing the workman in Grade-IV and appearing his name in the attendance register does not arise as he was not called for interview at any point of time. He further said that the workman was never officially engaged by A.T. Road Branch of the Bank and as such, his name does not appear in the salary register. On casual occasions as per contingencies and the need of the Bank the workman had worked in the Canteen of A.T. Road Branch on adhoc basis for odd jobs, such as carrying, supplying water etc. and payment was made to him through pay cash vouchers according to the job done, and as he was not the employee of the Bank extension of benefits like medical allowance as claimed by him does not arise and he was engaged on daily wage basis. The Management witness No. 1 further added that the Bank is having definite rule for appointment for sub-staff and a person engaged on temporary basis as a stop gap arrangement without following the laid down procedure and that too by an authority who has been authorized to recruit any person including the temporary employees would not get appointment of regular post. He added that if the Management is directed to consider the appointment of the workman who was not selected under the rules then he would get the benefit of being appointed to the post without the due qualification or without facing any competition from eligible candidates and against the enhanced principles of equal opportunity for all and it would be highly illegal and invalid and it would amount to a backdoor entry. Hence, the witness concerned prayed to dismiss the claim of the workman.

In his cross-examination the Management witness No. 1 stated that the workman was allotted a space in their office just to serve tea and snacks to the employees but they do not pay any money from the Bank and hence question of vouchers does not arise and he confirmed that the workman was not a casual or temporary worker of their Bank and he could not say since when the workman was

continued his canteen service as there is no record. He also did not know about the letter dated 23.5.87 sponsoring the name of the workman for allowing him to participate in recruitment process.

The Management witness No. 1, Mr. Rupak Saha, the Senior Manager, HRM, Regional Office, Bank of Baroda, G.S. Road, Guwahati stated that his predecessor has filed photocopies of some pages of Register recording payment made to the workman by cash vouchers for the period from 01.01.05 to 16.02.06 and at the time of filing the evidence on Affidavit by his predecessor the said register was not traceable and hence, it could not be proved. Subsequently as per order dated 14.12.09 passed by this Hon'ble Court the Management filed the said photocopies of Postage Register recording payment made to the workman by cash vouchers and thereafter the said Register was misplaced in the Branch. Subsequently it has been traced out and proved as Exhibit-3, 3(1) to 3(10) for the period from 01.01.2006 to 16.02.2006. the Management witness No. 2 has proved the documents marked as Exhibit-3, the Telephone Bill and the payment of concurrent Auditors which is a miscellaneous Register for the period from 01.01.2005 to 17.2.2006. He has also proved the Memorandum of Settlement *vide* Exhibit-4 arrived at between the Management of Bank of Baroda, representative of Eastern Regional Council of Bank of Baroda Employees Association, Representative of Bank of Baroda Karamchari Samiti, Paschim Banga, over proposed call for strike in the office of West Bengal on 03.04.2007 u/s 12 (3) of the I.D. Act, 1947, in course of conciliation proceeding held on 20.2.2008 before the Assistant Labour Commissioner (C), Kolkata.

6. From the evidence of both the sides along with the documents as well as the statement of the workman recorded on 30.8.2013 it is revealed that the workman was engaged as casual worker in the canteen of the Bank of Baroda, A.T. Road Branch, Guwahati and his job was purely casual on daily rated wages, Exhibit-3 (1) to Exhibit-3 (10) shows that the wages was paid to the workman on daily system through vouchers. Exhibit-4 is the Memorandum proved by the Management wherein it is clear that a settlement was arrived at between the Management of the Bank and their workman represented by Eastern Regional Council of Bank of Baroda Employees Association, Representative of Bank of Baroda Eastern States Employees Association, and the Representative of Bank of Baroda karamchari Samiti, Paschim Banga over proposed call for strike in the Branches/Office of West Bengal on 3.4.2007. During the course of conciliation proceeding held on 20.2.2008 the canteen boy system was abolished with immediate effect and no canteen boy would be recruited/engaged either on permanent basis or temporary/casual basis; and on abolition of the canteen boy system all the existing permanent canteen boys would be converted/re-designated as full time or part time Peaons in their respective scale. Canteen Boys/Sweeper was also set down wherein the

casual/temporary/full time/part time canteen boys who were sponsored by the Employment Exchange and were working in continuous basis known as regular and the casual canteen boys would be absorbed by the Bank as full time/part time Peon subject to fulfilment of certain conditions as stipulated in Clause-7 of the said Settlement. In the instant case the workman has not been able to produce document to show that he was absorbed by the Management as part time or full time/casual canteen boy rather he himself stated that he was paid daily based wages weekly through vouchers. Exhibit-3 and Exhibit-3 (1) to Exhibit-3 (10) shows that the workman was paid @ Rs. 50 sometimes for 3 days, sometimes for 2 days. The evidence of Management also shows that the workman was engaged purely on casual basis on need of the Bank for the purpose of carrying and loading water, etc. in the canteen of the Bank which was sponsored by the staff of the canteen and not by the Management. Thus it is crystal clear that the workman has not been able to establish that there was relationship of employer-employee.

7. Further the latest development of the reference as regards prayer for withdrawal of the proceeding made by the workman in the event of appointment of his daughter Smt. Jumi Kalita, it is revealed that the workman is not willing to proceed with the case and with a view to cut root of the dispute as well as for the betterment of the service of his daughter. The workman also categorically relinquished all his claim/reliefs made in this Reference.

8. In view of the above discussion and having regard to my findings arrived at as above it is held that the workman has failed to prove his contention that he was appointed by the Management as canteen boy and he had been working regularly since September, 1987 till his disengagement and that the Management in violation of provisions of Section 25F of the I.D. Act the workman was not appointed as per any provision of the rule of the Management and as there was no valid employer and employee relationship exists. Accordingly this Reference is disposed of without granting any relief to the workman as prayed for.

Send the no relief Award to the Ministry as per procedure.

Given under my hand and seal of this Court on this 30th day of August, 2013 at Guwahati.

L.C. DEY, Presiding Officer

नई दिल्ली, 4 अक्टूबर, 2013

का.आ. 2339.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय बंगलौर के पंचाट (संदर्भ संख्या 74/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/9/2013 को प्राप्त हुआ था।

[सं. एल-12011/74/2008-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 4th October, 2013

S.O. 2339.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CR. No.-74/2008) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 30.09.2013.

[No. L-12011/74/2008-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 19th September, 2013

Present : Shri S. N. NAVALGUND,
Presiding Officer

CR No. 74/2008

I Party

Shri Anantha Krishna,
Syndicate Bank
Employees Union,
C/o Syndicate Bank,
Supermarket,
HUBLI.

II Party

The Asst. General Manager,
Syndicate Bank,
Regional Office,
Neeligin Road,
HUBLI.

APPEARANCE

I Party : Shri M. Rama Rao,
Authorised Representative

II Party : Shri Ramesh Upadhayay,
Advocate

AWARD

1. The Central Government *vide* order No. L-12011/74/2008-IR (B-II) dated 24.10.2008 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

“Whether the claim of Syndicate Bank Employees Union to reimburse the missing cash of Rs. 60,000/-

to Sri Ravindra R. Dhawale is legal and justified? What relief the workman is entitled to?"

2. On receipt of the reference while registering it is CR 74/2008 notices were issued to both the sides the I party entered his appearance through Sh. M. Rama Rao, General Secretary, Dharwad District Bank Employees Association and II party through Ramesh Upadhyay Advocate and the claim statement signed by Sh. Ravindra R. Dhawale workman covered in the reference and M. Ananthakrishna claims to be Authorised Representatives of the I Party Union came to be filed on 20.05.2010 and the Counter Statement for the II party signed by its Assistant General Manager, Regional Office came to be filed on 21.07.2010.

3. In the Claim Statement it is alleged the I Party who was working in the II Party Cash Department at AA Circle, Shimoga Branch on 09.10.2006 due to absence of Smt. Jasinta, Attender who was assisting him, Sh. Vinayak, Attender was entrusted her work relating to cash bundles wrapping etc. and at about 1230 p.m. Sh. Vinayak came to cash cabin where he was working as Cashier and opened the second drawer of the cash cabin and taken out 10 bundles of Rs. 100 denomination notes for wrapping and then he kept two bundles on single lock box and two bundles on stitching table and informing him that gum tape being exhausted he would bring it from the concerned officer left the cash cabin and then he turned to his back side and saw only four bundles and not 10 bundles of cash and he called Sh. Vinayak who was standing beside Sh. Vijaya Kumar, Officer and asked him about another six bundles of cash and as he expressed being not aware of the same immediately he complained it to Sh. Vijaya Kumar, Officer of shortage of six bundles of Rs. 100.00 denomination amounting to Rs. 60,000.00 taken by Sh. Vinayaka from cash cabin and officer directed him to close the cash counter and took the cash for tally and observed Rs. 60,00,000 as shortage and later Sh. M.P. Prabhu, Manager who came to the branch and asked him to reimburse Rs. 60,000.00 otherwise he would be suspended and left with no alternative he took loan from Vijayakumar, Officer through cheques on his OD No. 438/2005 and paid the amount and subsequently reimbursed the same by raising jewel loan on the very next day. It is further alleged that he complained the Branch Manager in writing on the same day and requested to enquire into the matter but no action was taken either by complaining to the police or taking up the matter with higher authorities and thereby he has been made a scape goat and as the manager did not initiate any action on 12.10.2006 again he complained to the Branch manager with a request to make necessary enquiries since he did not respond in any manner he wrote one more letter on 04.11.2006 to the Branch Manager to investigate into the matter which was also ignored. It is further alleged that the I Party workman on his independent investigation found that Sh. Vinayak, Sub-staff had taken substantial

loans from outside and was in financial problems since 2000 and several arrest warrants were being issued against him by the courts of Shimoga for the recovery of loans given by M/s. H.R. financiers, Shimoga but knowing the said fact the Branch Manager had not initiated any Disciplinary Action against him and after he reported the injustice caused to him to the I Party union it took up the matter to the Regional Manager, Hubli for the II party with letter dated 20.12.2006 to enquire into the matter which was ignored whereas the Head Office of the II party replied to the letter stating that its workman is asked to file police complaint in his individual capacity and thereafter the Assistant General Manager, Hubli wrote a letter on 20.08.2007 informing that it is for him to lodge the police complaint in his individual capacity if he desires. Thus, it is contended that II party having not investigated into loss of Rs. 60000.00 it is liable to reimburse the said amount to the workman. *inter alia*, in the counter statement filed for the II party it is contended on 09.10.2006 the workman complained of cash shortage of Rs. 60000.00 stating that he had given 10 packets of 100 Rs. Notes denomination to the Attender but he gave him only four packets and is claiming having handed over all the 10 packets and when this fact was informed by the Branch Manager to the Regional Office he was advised to follow the procedure in the manual of instructions which include keeping the employee/cashier under suspension in case of non-reimbursement of cash before end of the day lodging of police complaint etc. and as on the same day he voluntarily made good the shortage the Branch Manager did not proceed to keep him under suspension or to file Police Complaint or to initiate any Disciplinary Action in the matter. It is further contended that after making good the alleged shortage the I Party workman requested for enquiry and though it was not necessary to hold the enquiry as there was no loss to the bank considering his representation one of its Manager was deputed on 11.10.2006 and as he could not fix any responsibility to the Attender no further action was taken. It is further contended that on 23.11.2006 when I Party workman approached the Nodal IR Cell, upudi along with another member of SBEU they clarified about the matter and permission was given to him to lodge police complaint in his individual capacity but he did not report having filed any complaint. Thus it is contended the I Party workman who was the custodian of the cash after reporting shortage of Rs. 60000.00 on his own since made it good to tally the cash at the end of the day if at all he had grievance against the attender it was for him in his individual capacity to take action against him as such it is not responsible to reimburse the said amount.

4. In order to substantiate the claim of the I Party Union the Authorised Representative while filling the affidavit of the workman Sh. Ravindra R. Dhawale while examining him on oath as WW 1 got exhibited Cash Tallying worksheet dated 09.10.2006 prepared by himself and Officer

Vijaya Kumar; Xerox copy of the cheque given by Vijaya Kumar on 09.10.2006 amounting to Rs. 60,000.00; carbon copy of the letter addressed by I party to the Branch manager with sketch of the branch premises prepared by him; copies of two letters addressed to Branch Manager dated 12.10.2006 and 04.11.2006; copies of letters addressed by the I Party Union to the Regional Manager, Regional Office, Hubli, the General Manager (P), Syndicate Bank, Head Office, Manipal and Com. Anil Kumar Srivastava, General Secretary—Syndicate Bank Employees Union, Circle Office—Lucknow; letter received by him from AGM advising him to lodge the complaint in his individual capacity dated 20.08.2007; letter of authorisation issued in favour of Sh. Anantha krishna by the State Secretary, Syndicate Bank Employees Union dated 21.01.2008; copy of the conciliation petition submitted to ALC(C), Hubli dated 21.01.2008; copy of the reply given by the AGM of the II Party to the ALC(C), Hubli dated 11.04.2008; copy of the Rejoinder given to ALC(C), Hubli dated 06.05.2008; copy of the investigation report submitted by P.B. Sharma with statement of Satyanarayana and V.K. Rao; three bank circulars dated 18.03.2008, 03.04.1992 and 07.01.2006; certified copy of the proceedings before the Principal Civil Judge, Shimoga in Execution Case No. 126/2001, 304/2001 and 126/2001 in relation to recovery of money from Sh. Vinayak; a letter received by him from the State Secretary, SBEU authorising him and M. Ananthakrishna to make representation before this tribunal dated 31.03.2010 as Ex W-1 to Ex W-25. He also while filling the affidavit of M. Anantakrishna examined him on oath WW 2 and in his evidence got exhibited Xerox copies of the application filed by the I party to AGM, II Party under RTI application dated 01.12.2010 and reply received from PIO dated 21.12.2010 as Ex W-26 and Ex W-27. *inter alia*, the learned advocate appearing for the II Party while filling the affidavit of T. Satyanarayana, incharge Branch manager of AA Circle, Shimoga on 09.10.2006 examined him on oath as MW1.

5. With the above pleadings, oral and documentary evidence when the matter was posted for arguments the authorised representative of the I party filed written arguments reiterating what is stated in the claim statement and counsel for II party addressed his oral arguments.

6. On appreciation of the pleadings, oral and documentary evidence placed on record by both the sides in the light of the arguments put forward by both the sides I have arrived at conclusion the claim of the I Party Union to reimburse the missing of Cash of Rs. 60000.00 to Sh. Ravindra R. Dhawale is unsustainable and the reference is liable to be rejected for the following.

REASONS

7. The facts not in dispute are being that on the particular day *i.e.* 09.10.2006 Sh. Ravindra R. Dhawale who was cashier reported to the incharge Branch Manager Sh. Satyanarayana MW 1 about cash shortage of

Rs. 60000.00 stating that Sh. Vinayak, Attender who came inside the cabin took 10 bundles of Rs. 100.00 denomination notes for wrapping and keeping two bundles on single lock box and another two on stitching table informing that gum tape being exhausted he shall secure the same left the cash cabin and did not come back and when he turn to his back side he saw only four bundles and not the 10 bundles he called Vijayakumar and asked him as he said that he returned all the 10 bundles and inturn the incharge Branch Manager when reported it to Regional Office, Hubli he was advised to follow the procedure laid down in the manual of instruction which include to keep the cashier under suspension in case of non-reimbursement of cash before the end of the day, lodging of police complaint etc. and as Cashier Ravindra R. Dhawale voluntarily made good by taking load from Officer Vijayakumar he did not proceed to initiate any action like keeping the cashier under suspension or filing police complaint and later when the cashier made representations to enquire into the matter it was got investigated through Manager, Security Cell, Regional Office, Hubli and as he could not make out or fix the responsibility on the attender the cashier was given permission to file complaint to the jurisdictional police in his individual capacity. Since it is not in dispute the cashier was the custodian of the cash and he who initially reported shortage of Rs. 60,000.00 stating that the attender Sh. Vinayaka who had come in his cabin taken out 10 bundles of Rs. 100.00 note denomination for wrapping keeping only two bundles on single lock box and two bundles on stitching table went out saying that gum tape is exhausted and he would bring the same and when he turned back and found only four bundles being there and on enquiry with Vinayaka he is claiming that he has wrapped and kept all the 10 bundles, when the Branch manager was instructed by the Regional Office to take action as provided under the Bank Manual he himself made good that alleged shortage by taking money from the Officer Vijayakumar and on his representation he was also permitted to file a complaint in his individual capacity against Vinayaka but he did not venture to file such complaint. It was vehemently argued by the authorised representative of the I party taking me through the Bank Circular dated 07.01.2006 copy of which is produced at Ex W-21 that it was the duty of the Branch manager to make a police complaint immediately which would have brought out the truth and as he has failed to perform his duties the II party is liable to reimburse the amount to the workman. But with due respect to the authorised representative of the I party clause (a) of the said circular since makes it clear that the complaint to the police need not be lodged in cases where the amount is recovered and/or where recovery is not doubtful, in the instant case immediately when the Regional Office instructed the incharge Branch manager to initiate action the I Party workman *i.e.*, the cashier having made good the amount the Branch Manager was not obliged or was required to lodge the complaint as per the circular. If at all

the I party workman *i.e.*, the cashier was certain that the Attendar Vinayaka had knocked off six bundles of Rs. 100.00 denomination notes amounting to Rs. 60,000.00 from the cabine when he was permitted by the Bank to file complaint to the police in his individual capacity he would have filed a complaint and as he failed to lodge a complaint it suggest that he himself was neither sure attendar Vinayaka knocked off that amount or how that much of the amount was found short by him. Under these circumstances, the claim of the I party Union that this amount is to be reimbursed by the II Party bank do not stand to reason. In the result, I have arrived at conclusion the claim of Syndicate Bank Employees Union to reimburse the missing cash of Rs. 60000.00 to Sh. Ravindra R. Dhawale Cashier is not legal and justified. Accordingly, I pass the following.

ORDER

The Reference is Rejected holding that the claim of Syndicate Bank Employees Union to reimburse the missing cash of Rs. 60000.00 to Sh. Ravindra R. Dhawale is not legal and justified and that he is not entitle to any relief.

(Dictated to UDC, transcribed by him, corrected and signed by me on 19h September 2013)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2013

का०आ० 2340.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सनर्टल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (99/11) में प्रकाशित करती है जो केन्द्रीय सरकार को 10.10.2013 को प्राप्त हुआ था।

[सं० एल-12011/40/2011-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 10th October, 2013

S.O. 2340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 99/11) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, KANPUR as shown in the Annexure, in the industrial dispute between the management of Central Bank of India, and their workmen, received by the Central Government on 10/10/2013.

[No. L- 12011/40/2011- IR(B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 99 of 11

Between:

Sri S.K. Rai Assistant Secretary,
Central Bank State Staff Association
C/o Sri A.U. Ansari,
CTO, Urdu Bazar Branch,
Central Bank of India, Gorakhpur.

And

The Deputy General Manager,
Central Bank of India Zoanl Office,
Aklash Deep 23, Vidhan Sabha Marg,
Lucknow.

AWARD

1. Central Government, Mol, New Delhi, *vide* notification No. L-12011/40/11 IR-B-II dated 11.11.11, has referred the dispute for adjudication to this tribunal.

2. Whether the action of the management of Central Bank of India, Gorakhpur, in illegally deducting Rs. 6000/- from the salary account of Sri A. U. Ansari, CTO/SWO Branch Office Urdu Bazar Gorakhpur without giving any notice to him about the deduction is just fair and legal? Hat relief the workman is entitled to?

3. In the instant case after receipt of reference order from the Ministry, repeated notices under registered post have been issued to the Union raising the dispute, but none appeared in the case from their side nor they filed any claim statement. On the other hand opposite party appeared and filed letter of authority.

4. Therefore, from the conduct of the Union it is crystal clear that they are not interested in prosecuting with the case, therefore, reference is bound to be decided against them for want of pleadings and proof.

5. Therefore, reference is decided in the above terms against the Union holding that the union is not entitled for any relief pursuant to the present reference.

6. Reference is answered accordingly.

RAM PARKASH, Presiding Officer

नई दिल्ली 10 अक्टूबर, 2013

का०आ० 2341.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या (5/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/10/2013 को प्राप्त हुआ था।

[सं० एल-41012/193/2000-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th October, 2013

S.O. 2341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 5/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Railway, and their workmen, received by the Central Government on 10/10/2013.

[No. L-41012/193/2000-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/5/2001

Presiding Officer: SHRI R.B. PATLE

Shri B. Rama Rao, Ex. Pointsman-B,
S.E.Rly, Nr. Rly. Station,
Nowrozbad, Distt. Umaria (MP)

....Workman

Versus

Divisional Railway Manager,
South Eastern Railway,
Bilaspur

....Management

AWARD

Passed on this 12th day of September, 2013

As per letter dated 30-11-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-41012/193/2000-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of South Eastern Railway, Bilaspur (MP) in terminating the services of Shri B. Rama Rao, Ex. Pointsman-B *w.e.f.* 4-1-95 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties, Ist party LR of workman proceeded ex parte on 25-2-2011. No statement of claim is filed on behalf of workman.

3. Ex parte Written Statement is filed by management. It is case of IInd party that chargesheet was issued to workman on 1-2-90 was pasted on notice board in presence of two witnesses. It was also sent to his address by RPAD. The letter was received undelivered. The letter was redirected to Nowrozabad. It was returned to the sender undelivered. The order of appointment of Enquiry Officer dated 17-8-90 was also sent to the address which was received back with the remark that party was on long sick

from 3-9-89. That Railway took action on the chargesheet dated 16-1-90 appointing Enquiry Officer. Despite of receiving copies of both the documents, false allegation are made against Railway failed to provide documents to the workman. The attitude is not proper. The Enquiry Officer draw findings without giving opportunity to delinquent is denied. That final defence statement dated 23-1-92 brought on record that there was no defence in the enquiry Proceeding despite of providing reasonable opportunity. In this representation dated 6-6-98 workman had admitted receipt of memorandum dated 16-1-90. The delinquent was made aware to have defence Asstt. It is not obligatory for Enquiry Officer to ask delinquent workman to bring Defence Asstt. That no representation was received from workman. The written statement filed by IInd party is vague as to the charge against delinquent and the details of the enquiry conducted against the workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of South Eastern Railway, Bilaspur (MP) in terminating the services of Shri B. Rama Rao, Ex. Pointsman-B *w.e.f.* 4-1-95 is legal? In Affirmative

(ii) If not, what relief the workman is entitled to? Relief prayed by workman is rejected.

REASONS

5. The workman has not filed statement of claim neither adduced evidence to substantiate his grievance.

6. The management's witness R. Shankaran filed affidavit of his evidence. His evidence shows that major penalty chargesheet was issued to the workman. The workman did not participate in the Enquiry Proceedings contradictory stands were taken by the workman. The evidence of management's witness remained unchallenged. Copies of documents are produced by IInd party along with Written Statement. As workman has failed to file statement of claim or adduce evidence, the action of management terminating services of workman cannot be said illegal. Therefore I answer Point No. 1 in Affirmative.

7. Point No. 2- In view of my findings in Point No. 1, relief prayed by workman deserves to be rejected.

8. In the result, award is passed as under:—

(1) Action of the management of South Eastern Railway, Bilaspur (MP) in terminating the services of Shri B. Rama Rao, Ex. Pointsman-B *w.e.f.* 4-1-95 is legal.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer.

नई दिल्ली, 10 अक्टूबर, 2013

का.आ. 2342.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या (98/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/10/2013 को प्राप्त हुआ था।

[सं. एल-41012/13/2002-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th October, 2013

S.O. 2342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 98/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway, and their workmen, received by the Central Government on 10/10/2013.

[No. L-41012/13/2002-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/98/2002

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Harprasad Kushwah,
R/o Bilgayya Ward,
Behind Alka Maternity Home,
Bina (MP)

....Workman

Versus

Divisional Railway Manager,
Central Railway,
Bhopal (MP)

....Management

AWARD

Passed on this 12th day of September, 2013

As per letter dated 19-6-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-41012/13/2002-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of DRM, Central Railway, Bhopal in terminating the services of Shri Harprasad Kushwah w.e.f. 16-2-2000 after conducting the domestic enquiry is justified? If not, what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted his statement of claim at Page 4 of the record. The case of workman is that

on 6-5-94, information was received on telephone about distribution of bogus reservation ticket from Reservation counter, Guna Junction for the train Kota to Bina. That he was not on duty on 6-5-94. To take revenge, he was handed over to Railway Police, he was arrested. Thereafter Ist party workman was suspended. That in violation of the rules, caused harassment to him. That he was acquitted by CGM Court on 31-9-2000. Said judgment was overlooked by Railway authorities at Bhopal. That the Railway authorities had themselves fabricated proceeding contrary to the judgment dated 16-2-2000 disobeying said judgment that the termination of his service is illegal. Ist party workman has filed Statement of Claim in person without help of the legal professioner.

3. IInd party management filed reply at Page 5/1 to 5/3. IInd party submits that Ist party was terminated on 16-2-2000. It was found that he could not be continued in service because of the serious nature of allegation against him. The workman suppressed/concealed material facts. That workman was suspended as he was sent to Jain. That acquittal of workman is matter of record. The allegation made against IInd party are false, allegations is vague. IInd party admitted the services of Ist party workman were terminated on 16-2-2000 for his unauthorized absence. The IInd party relies copy of chargesheet dated 26-10-98 and termination dated 16-2-2000. It is submitted that the workman is not entitled to any relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of DRM, Central Railway, Bhopal in terminating the services of Shri Harprasad Kushwah w.e.f. 16-2-2000 after conducting the domestic enquiry is legal?	In Negative
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(ii) If not, what relief the workman is entitled to?"	As per final Order.
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REASONS

5. Before dealing with the reasons, I make it clear that the workman prosecuted his claim in presence. The pleading are not proper. Though the IInd party is represented through Advocate, the pleadings are not happy. The details of the Enquiry Proceedings are absolutely not pleaded by IInd party though the documents in that regard are produced.

6. IInd party has not taken care to prove the documents in the record of Enquiry proceedings. Only zeroz copies of some documents are produced alongwith list. The copy of termination order dated 16-2-2000 produced on record shows that the services of Ist party workman were terminated as the representation was not received in

reply to the enquiry report in connection with the major penalty chargesheet dated 26-10-98. The workman was held guilty of the charges of misconduct under Rule 18, 19 of the RS(D&A) Rules 1968. The document at Page 5/5 along with list shows charge against workman was he was absent. Ist party workman Harprasad Kushwah was absent without information from 6-10-94. The chargesheet was issued to him under Rule 3-I, II, III of Rly. Conduct Rules 1966. Workman has not challenged legality of the enquiry conducted against him therefore no preliminary issue in that regard is to be framed. The evidence is adduced by workman filing his affidavit at Page 8. In his affidavit workman has stated that he was working in Rly. from 1-1-66 as porter from 1-6-71, he was made permanent. That on 6-5-94, at the schedule time of Kota Bina train, he was on rest. He claims ignorance about Railway reservation tickets. He was assisted by RPF and thereafter he was suspended. One more affidavit is filed by workman at Page 9 about is arrest by GRPF. That he was suspended. He was not paid salary. The evidence in both affidavit of workman remains unchallenged as the counsel for IInd party did not take pains to cross-examine him.

7. Management filed evidence of affidavit of witness Shri D.D. Ahirwar. He claims to be conversant with the facts of the case that workman was dismissed from 16-2-2000 for unauthorized absence. Charges as per memorandum dated 26-10-98 were proved. Copies of chargesheet and dismissal order already filed. That SF-5 dated 28-5-94 was issued to workman for selling tickets at Guna Station. He remained in police custody till 15-5-94. He was acquitted by Court. No further action was initiated. The services of applicant has been terminated for unauthorized absence. Management's witness in his cross-examination says that workman was not handed over to police by him, he was arrested by GRPF. He denies that the judgment of court was not obeyed. He denies that services of workman are illegally terminated. As stated above, the IInd party has not produced record of Enquiry proceedings. The documents in Enquiry proceedings are not proved.

8. Management produced documents Exhibit M-1. The order of termination of service of Ist party workman is reviewed on 28-9-10 and workman is allowed 60% pension and compassionate allowance w.e.f. 16-2-2000. The copy of applications dated 9-8-2010 submitted by workman is produced. The copy of order dated 28-9-10 is also produced.

9. The evidence of Ist party workman that he was in Railway service from 1966, he was made permanent in 1971 is not shattered as the workman was not cross-examined. There is no evidence on record from IInd party who was appointed as Enquiry Officer, Presenting Officer when the enquiry was fixed, whether the workman was given opportunity to cross-examine the management's witness in Enquiry proceedings. In absence of such evidence, the order of removal from service of workman cannot be said legal. There is no evidence whether the management had

considered service record of Ist party workman while passing the order of removal from service for unauthorized absence. Whether any kind of leave was to his credit was also not considered while passing the order of removal from service. As per the documents produced on record, workman was served with chargesheet for his unauthorized absence from 6-10-94. The copies of documents produced by management includes the Enquiry Report but the evidence of management's witness is silent about it. For above reasons, the order of dismissal from service dated 16-2-2000 cannot be said legal. For above reasons, I record my findings in Point No. 1 in Negative.

10. Point No. 2-In view of my finding in Point No. 1, question arise as to what relief the workman is entitled, the order of dismissal is not legal as management has not proved the Departmental Enquiry held against workman. The workman was in employment of IInd party from 1966 remained unchallenged. The workman himself submitted that he was arrested by GRPF and was acquitted by CGM Court. However the copies of judgment is not produced by either parties. The acquittal of workman is also not in dispute as management witness in his affidavit has stated about acquittal of workman in the year 2000.

11. Counsel for IInd party did not point out the punishment prescribed for unauthorized absence under the rules. The unauthorized absence cannot be said grave misconduct causing any loss to justify the highest punishment of dismissal of service. The evidence of management witness does not show that any notice was issued to Ist party to join duty and workman refused to join the duty therefore gravity of misconduct is reduced. Documents produced by management that workman is allowed 60% family pension as per order dated 28-9-10 on application submitted by workman himself. However evidence of both parties in that regard is silent. Workman himself accepted pensionary benefits. Therefore no interference in said order is called for.

12. In the result, award is passed as under:—

- (1) Action of the management of DRM, Central Railway, Bhopal in terminating the services of Shri Harprasad Kushwah w.e.f. 16-2-2000 after conducting the domestic enquiry is illegal.
- (2) IInd party shall provide pensionary benefit as per order dated 28-9-2010 (Exhibit M-1). And any other reliefs under rule after dismissal orders is set-aside.

R.B. PATLE, Presiding Officer.

नई दिल्ली, 10 अक्टूबर, 2013

का०आ० 2343.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक आफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 75/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/10/2013 प्राप्त हुआ था।

[सं एल-12012/48/2006-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th October, 2013

S.O. 2343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 75/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 10/10/2013.

[No. L-12012/48/2006-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/75/2006

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Ramnagvanshi, General Secretary,
Prathadith Karamchari Kalyan Manch,
F-I, Karambhumi, Tripti Vihar,
Indore Road, Ujjain (MP)

....Workman

Versus

Asstt. General Manager,
State Bank of Indore,
Regional Office,
765/766, Nagpur Road, Mahanadda,
Gorakhpur, Jabalpur (MP)

....Management

AWARD

Passed on this 6th day of September, 2013

1. As per letter dated 17.11.2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/48/2006-IR(B-I). The dispute under reference relates to:

"Whether the action of General Manager, State Bank of Indore, Jabalpur in not keeping Shri Rajendra Yadav as daily wage peon from 9-4-99 to 21-8-04 without regularizing him is just and legal? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party filed statement of claim at page 3/1 to 3/4. The case of Ist party is that he was engaged by Branch Manager Vinod Jain on daily wages Rs. 35/- against vacant post of peon from 9-4-99. He was performing his services honestly without any complaints. His wages were

increased to Rs. 40,50,55,60,65, 70 per day. He was not paid wages for Sunday and holidays. That he has completed 240 days continuous service during each of year. His services were terminated without notice or paying retrenchment compensation from 21-8-04. As given details he was working under the Branch Manager. On failure of Conciliation Proceedings, report was submitted to the Govt. of India and dispute is referred for adjudication. Workman submits that he is covered a workman under Section 25-A of I.D. Act as he was working for more than 240 days during each of the calendar years. His services are terminated without notice or paying retrenchment compensation in violation of Section 25-F of I.D. Act. He submits that principles of last come Ist go was not followed. IInd party violated Section 25-G of I. D. Act. That after termination of his services, IInd party employed other persons as such committed violation of Section 25-H of I.D. Act. On such grounds, workman prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 10/1 to 10/8. It is submitted that IInd party Bank carries its business as per directions of RBI issued time to time. The employees are appointed after approval of Govt. of India. That public notice used to be issued for appointment from regular employees, peons, messengers, security guards. The appointment of sub staff in violation of such rules is not permitted as it amounts to back door entry.

4. IInd party denies that workman was required to work whole day. According to IInd party, Ist party was engaged on daily wages for cleaning work of toilet for 1-2 hours per day as per exigency. There is no question of regularization of his services as he was working for 1-2 hours. IInd party denies that workman was continuously working for 240 days in a year. That IInd party has no power to appoint permanent peon. There is no employer, employee relationship between workman and IInd party. IInd party referred to various judgments by Hon'ble Supreme Court and submits that workman is not entitled to relief claimed by him. That workman was not appointed following recruitment rules. On such grounds, he prays for rejection of claim of workman. In additional pleadings, it is submitted that the dispute is raised by Shri Ramnagvanshi, Secretary of Daily Wage Bank employees Union is terminated from service therefore he is not competent to raise the dispute on behalf of workman. On such grounds, IInd party prays for rejection of claim of workman.

5. Ist party filed rejoinder at Page 11/1 to 11/4. Earlier contentions in statement of claim are reiterated. Ist party claims that he was working for more than 240 days during each of the year, his services are terminated in violation of Section 25-G, H of I.D. Act. He prays for his reinstatement.

6. Considering pleadings on record, the points which arise for my consideration and determination are as

under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---|
| (i) Whether the action of General Manager, State Bank of Indore, Jabalpur in not keeping Shri Rajendra Yadav as Daily wage peon from 9-4-99 to 21-8-04 without regularizing him is just and legal? | Termination of services of Shri Rajendra Yadav by IInd party management is illegal. |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

7. Ist party workman is challenging order of his termination. He claims that he was engaged on daily wages from 9-4-99 by the Branch Manager against vacant post of peon. He was continuously working till 24-8-04. During each of the year he had worked for more than 240 days, his services are terminated without notice, without retrenchment compensation in violation of Section 25-F of I.D. Act. All those contentions of workman are denied by the IInd party. IInd party submits that workman was engaged on daily wages for 1-2 hours morning for cleaning of toilet, for bringing drinking water etc.

8. Though application is filed by IInd party that the claim submitted by Shri Ramnagwanshi claiming to be General Secretary of Daily Wages Bank employees union is not tenable and Ist party has submitted objection in engaging Advocate invoking Section 36(3) of I.D. Act, when matter came for hearing, respective objections were not pressed by both the sides.

9. Workman filed affidavit of his evidence consistent with his pleadings in Statement of Claim that he was working on daily wages from 9-4-99 till 21-8-04, wages were increased from Rs. 35 to 70 per day. His services is terminated without paying notice in violation of Section 25-F. He was working for more than 240 days during each of the year. He was paid minimum wages of Rs. 100/-. In his cross-examination, Ist party says that there were three permanent peons working as Daftry, Cash peon, Messenger, he was not issued appointment letter. He was paid weekly wages. That he was supplied documents to the effect that he was working for more than 240 days in a year. In his cross-examination, it is not challenging that the workman was working more than 240 days during every calendar year. In his further cross-examination, he further says that he had passed 8th standard, he was not interviewed for the post of peon. He was paid daily wages. Once he was paid bonus, he claims ignorance about rules of recruitment. He denies that he was working 2 hours in a day. He had not received appointment letter or order of termination. He admits that he was paid minimum bonus Rs. 100.

10. The case of IInd party is that workman was engaged on daily wages as per exigency for cleaning work and filling drinking water. The evidence of the management's witness Harishankar Parasar on affidavit is mostly devoted that the Union is not competent to raise the dispute. It is denied that workman was continuously working from 9-04-99 to 21-8-04. That the workman was engaged on daily wages, he was working for 2 hours. In his cross-examination, management's witness says that he was not posted in the branch where workman was working. The witness has no personal knowledge about working of the workman. The vouchers produced by workman were verified from office but said documents were not found. He has stated in his evidence that workman was working for 2 hours a day after enquiry from staff. Shri Devendra Khare, Daftary, Hiralal, any of them are not examined as management's witness. Thus evidence of management's witness is here-say evidence. It cannot be preferred to the evidence of the workman. The management's witness in his further cross-examination says payments were made to the workman under miscellaneous head. However no register is maintained. Permission is not required for engaging casual labours, muster roll is not maintained. Workman was paid Rs. 50/- as per oral agreement. He has stated that no bonus is paid to the workman though in the Written Statement, IInd party has admitted payment of bonus. That bonus register is maintained in the Bank. They have not seen bonus register as he did not find it. That Bonous Register is same for all the employees. The evidence of workman and the evidence of management's witness are tested on probability. The evidence of workman appears congruent and reliable consistent with the pleadings. From evidence discussed above, it is clear that the workman was engaged as daily wage employee. He was working as part time employee in the Bank. His service are terminated without issuing notice or paying retrenchment compensation as such termination of services of workman in violation of Section 25-F is illegal. For above reasons, I record my finding in Point No. 1 in Negative.

11. Point No. 2- In view of my finding in Point No. 1 as termination of workman in violation of Section 25-F is illegal, question arises to what relief the workman is entitled? The evidence shows that Ist party workman was not appointed following recruitment process. The post was not advertised, no appointment letter was issued. Therefore the workman is not entitled for reinstatement. As termination of workman is in violation of Section 25-F, the reasonable compensation would meet the ends of justice. Considering length of working as part time employee for about 5 years by the workman, compensation Rs. 30,000/- would be appropriate to meet the ends of justice. Accordingly I record my finding on Point No. 2.

12. In the result, award is passed as under:—

- (1) Action of General Manager, State Bank of Indore, Jabalpur in not keeping Shri Rajendra Yadav as

Daily wage peon from 9-4-99 to 21-8-04 without regularizing him is illegal.

- (2) IInd party is directed to pay compensation Rs. 30,000 to the workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer.

नई दिल्ली, 10 अक्टूबर, 2013

का०आ० 2344.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे प्रबंध तंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 63/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/10/2013 प्राप्त हुआ था।

[सं० एल-41012/277/95-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th October, 2013

S.O. 2344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 63/97) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway, and their workmen, received by the Central Government on 10/10/2013.

[No. L-41012/277/95-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/63/97

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Dinesh Kumar Gadbar,
s/o Shri Khatlall,
C/o Shri Ram Singh Mehra, Ganda Nala,
Naya Area Harijan, Itarsi,
Distt. Hoshangabad (MP)

....Workman

Versus

Divisional Railway Manager (P)
Central Railway,
Bhopal

....Management

AWARD

Passed on this 11th day of September, 2013

1. As per letter dated 4-3-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section-10 of I.D. Act, 1947 as per Notification No. L-41012/277/95-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of DRM(P), Central Railway, Bhopal in terminating the services of Shri Dinesh Kumar Gadbar S/o Shri Khatlall w.e.f. Oct-91 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 3/1 to 3/3. The case of workman is that he was appointed on vacant post of Khalasi from 1-4-90. He was satisfactorily performing his duties from 1-8-91. His services were discontinued by oral order. His services were terminated without issuing any chargesheet, holding enquiry. He was not given opportunity of hearing. He has completed 240 days continuous service. He was not paid retrenchment compensation. He was not appointed on compassionate ground after death of his father Khetlal. He prays to set-aside order of his termination and prays for reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 8/1 to 8/3. Claim of workman is denied outright. However the IInd party admitted that workman was engaged during the period 1-4-90 to 28-7-90 at casual labour. He had worked for 67 days as waterman. That the workman was not continuously working as claimed by him. He was working only for summer season. His services were not terminated, no question of holding enquiry arise as Ist party had worked only for 67 days. On such grounds, IInd party prays for rejection of claim.

4. Workman filed rejoinder at Page 3 reiterating his contention in statement of claim. It is denied that he had worked only for 67 days as claimed by IInd party management.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------------------------|
| (i) Whether the action of the management of DRM(P), Central Railway, Bhopal in terminating the services of Shri Dinesh Kumar Gadbar S/o Shri Khatlall w.e.f. Oct-91 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

6. Ist party workman submits that his services were terminated without notice or praying retrenchment compensation. He had worked for more than 240 days.

Termination of his service is in violation of Section 25-F. IInd party denied above contentions of workman. It is submitted by IInd party. Ist party worked only for 67 days. Workman filed affidavit of his evidence consistent with his pleadings in statement of claim. In his cross-examination, workman says he had received appointment letter, its zerox copy is produced on record. But it was not letter of appointment. That appointment letter is not produced in record. The Identity Card is produced. In Exhibit W-1, the date of appointment is shown 6-4-90, in Exhibit W-2 name of Ist party workman is appearing. He was appointed on compassionate basis to supply drinking water during summer. Exhibit W-3 is certificate of 10th of Damodar who died on 6-9-89.

7. Written notes of argument are submitted by both the parties in support of their contentions. However evidence on record is not sufficient to hold that the workman was continuously working for more than 240 days. The workman is not covered under Section 25 (B) of I.D. Act, therefore the termination of service without notice or payment of retrenchment compensation cannot be said illegal. For above reasons, I record my finding in Point No. 1 in Negative.

8. Point No. 2-Relief prayed by workman deserved to be rejected.

9. In the result, award is passed as under:—

- (1) Action of the management of DRM(P), Central Railway, Bhopal in terminating the services of Shri Dinesh Kumar Gadbar S/o Shri Khatlall w.e.f. Oct. 91 is illegal.
- (2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer.

नई दिल्ली, 11 अक्टूबर, 2013

कांआ 2345.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार क्षेत्रीय ग्रामीण बैंक प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या (113/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/10/2013 प्राप्त हुआ था।

[सं एल-12012/13/94-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th October, 2013

S.O. 2345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 113/95) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur* as shown in the Annexure, in the industrial dispute between the management of *Kshetriya Gramin Bank*, and their workmen, received by the Central Government on 11/10/2013.

[No. L-12012/13/94-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/113/95

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Chouhan Singh Chouhan,
Post Office Tamot,
Tehsil Goharganj,
Distt. Raisen (MP)

....Workman

Versus

Manager,
Kshetriya Gramin Bank,
Hoshangabad (MP)

....Management

AWARD

Passed on this 10th day of September, 2013

1. As per letter dated 9-6-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/13/94-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of Kshetriya Gramin Bank, Hoshangabad in terminating the services of Shri Chouhan Singh Chouhan is justified or not? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman Chouhan Singh Chouhan filed his statement of claim at Page 2/1 to 2/6. The case of Ist party workman is that his services are wrongly terminating. He was working as peon with IInd party Bank from 1988. His name was sponsored through Employment Exchange for the recruitment process on the basis of recommendations, he was appointed as daily rated messenger/peon. He was paid bonus and salary by IInd Party. He received bonus for 254 days. He was continuously working from his initial appointment in 1989 till discontinuation of his service from 20-8-91. He had submitted representation by letter dated 6-12-93. It was not considered. It is further submitted that after termination of his service, IInd party has employed IInd party No. 3 junior to him. The services are retrenched out of personal bias. He was getting monthly salary therefore they have been treated as regular employee instead daily rated. That his services are terminated for allowing back door entry to junior persons. The action of the management is arbitrary, illegal. He has right of regularization in service. IInd party admitted payment of bonus for 251 days. It is submitted that he worked for more than 240 days in a calendar year. The termination of his service is illegal. On such grounds, he prays for reinstatement with consequential benefits.

3. IInd party Bank filed Written Statement on 28-6-95. It is submitted that Ist party workman was working

as party time peon on daily wages from 12-7-89 to 20-8-91. He had worked for 62 days in 1989, 206 days in 1990 and 153 days in 1991. On 14-15/2/91, the interview for the post of part time messengers was held. The names of the candidates were received from Employment Exchange Hoshangabad. Ist party workman was also interviewed but it doesnot give right of employment to him. That as per information received from Bank. Ist party workman had worked only for 239 days and bonus was paid for 251 days only. Recovery proceeding was initiated. On such grounds, it is submitted that the claim of workman for regularization of service is not tenable.

4. Ist party filed rejoinder at Page 13/1 to 13/4 reiterating his contention that he was paid bonus for 251 days. He was continuously working for more than 240 days. His services were terminated in violation of Section 25-F of I.D. Act. His services were terminated without hearing and in violation of natural justice. It is reiterated for his reinstatement in service.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of themj for the reasons as below:—

- | | |
|---|---------------------|
| (i) Whether the action of the management of Kshetriya Gramin Bank, Hoshangabad in terminating the service of Shri Chouhan Singh Chouhan is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

6. Ist party workman claims that his services are terminated in violation of Section 25-F of I.D. Act. he had worked continuously for 254 days as peon inthe Bank. His name was sponsored through Employment Exchange. His services were terminated without notice, no retrenchment compensation was paid. Management denies above contentions of the workman. It is submitted that workman has not completed 240 days continuous service rather as per information received from Bank, the workman had worked only for 239 days. Bonus was wrongly paid for 251 days. Parties are in serious dispute about 1st party continuously worked for 240 days. The burden lies on workman to substantiate his claim. In his affidavit of evidence, workman has stated that the contents of statement of claim are correct. In his cross-examination, workman says appointment letter was not given to him. He started working from 1-4-90. Saving Account was in his name, salary was deposited in his account every month. That for 3 days, he had gone to tour. Allowances were paid to him. Said period was considered while calculating working days. However in his further cross-examination in para-6, workman says that he worked for 62 days in 1989,

206 days in 1990 and 153 days in 1991. During 1989 to 1990, he did not worke for few days. Management filed affidavit of witness Shri S.P. Tiwari. The witness of the management has also stated about working days of the workman as 62 days in 1989, 206 days in 1990 and 153 days in 1991 That bonus for 251 days was paid to workman by mistake and recovery proceeding were initiated. In his cross-examination, management's witness denied that the workman was continuously working from 1989 to 1991. Bonus was paid for 251 days though working days were 239 days. Therefore the burden lies on the management to prove that the bonus was wrongly paid for 251 days instead of 239 days. Management has not examined any witness on the point. The evidence of the workman is supported by the document about payment of bonus for 251 dasy. The document Exhibit M-6 produced by management shows working days of workman as 251 days. The Admission in cross-examination of workman about his working days cannot destroy the documentary evidence produced by management Exhibit M-6. The evidence of management about 239 working dasy of workman is not consistent. Management's witness in his cross-examination is cogent how 251 days were wrongly calculated instead of 239 days. Therefore the evidence of workman that he completed 240 days continuous service deserves to be accepted.

7. In his cross-examination management's witness in ipara-9 says that the services of workman were terminated without notice, no retrenchment compensation was paid to him. Thus termination of service of workman in violation of Section 25-F is established. For above reasons, I record my finding in Point No. 1 in Negative.

8. Point No. 2 In view of my finding in Point No. 1, termination of service of workman in violation of Section 25-F is established, the question arises to what relief to the workman is entitled. The workman in his cross-examination has admitted that he has not received letter of appointment. The workman hardly worked for 251 days. His services were discontinued in 1991. There is no evidence that appointment of workman was made in the said post. Claim of the workman for reinstatement cannot be allowed. The documents Exhibit M-1 is copy of letter received from employment exchange, M-2 was enclosed. Exhibit M-5 is letter issued ot Virendra Kumar Vishwakarma on 17-8-92. The letter of appointment on several conditions as part time messenger. From document Exhibit M-5, it is clear that Virendra Kumar Vishwakarma was not appointed on regular basis. Though the termination of service of workan is illegal, considering 251 working days of the workman, his reinstatement with back wages would not be proper rather allowing reasonable compensation would be appropriate. In my considered view, considering age of the workman, the working days of workman, compensation Rs. 75,000 would be appropirate. Accordingly I record my finding on Point No. 2.

9. In the result, award is passed as under:—

- (1) The action of the management of Kshetriya Gramin Bank, Hoshangabad in terminating the service of Shri Chouhan Singh Chouhan is illegal.
- (2) Management is directed to pay compensation Rs. 75,000 to the workman Shri Chouhan Singh Chouhan.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2013

कांआ 2346.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दुर्ग रजनीगा ग्रामीण बैंक के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ (संदर्भ संख्या 105/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/10/2013 को प्राप्त हुआ था।

[सं एल-12012/37/96-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th October, 2013

S.O. 2346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Awarde (Ref. No. 105/97) of the Cent. Govt. Indus. Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management in of Durg Rajandgaon Gramin Bank and their workman, received by the Central Government on 11/10/2013.

[No. L-12012/37/96-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO.CGIT/LC/R/105/97

PRESIDING OFFICER: SHRI R. B. PATLE

Shri Daua Ram Sahu,
S/o Shri Nammulal Sahu,
Thana Dongergaon,
Distt. Rajnandgaon,
Chhattisgarh

....Workman

Versus

Chairman,
Durg Rajnandgaon Gramin Bank,
MP Housing Board shopping Centre,
GE Road,
Raipur Chhattisgarh

....Management

AWARD

Passed on this 11th day of September, 2013

1. As per letter dated 25-3-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-12012/37/96-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of Durg Rajnandgaon Gramin Bank in relation to their Kokpur branch in refusing employment to Shri Daua Ram Sahu S/o Nammulal Sahu Messenger w.e.f. 3-2-91 is lawful and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to parties. Ist party workman filed statement of claim at Page 3/1 to 3/3. Case of workman is that he was employed as messenger/farash on daily wages in Kokpur branch from 8-12-86. He was paid wages fixed from time to time by Collector. He continued to work till 1988. Again he was re-employed from 29-9-89 till 19-1-91. He had completed 240 days continuous service including holiday and Sundays. That as per circular dated 18-10-84 by Govt. of India, Ministry of Finance qualification for appointment of messengers is 40 Lakhs wer prescribed as per circular dated 22-5-87 by NABARD. The branches having business more than 30 Lakhs were allowed full time messengers and regularization of their services. That Union of India being Principal Employer of employees working in Regional Rural Banks accepted recommendations of national Industrial Tribunal on 22-2-91 for regularization of the services of messenger/sweeper.

3. Durg Rajnandgaon Regional Rural Bank has been regularizing daily wage messagers from 1989 holding interviews. His services were not regularized instead his services are terminated in violation of Section 25-F of I.D. Act. On such grounds, workman prays for his reinstatement. Statement of claim is not signed by the workman but bear signature of his counsel.

4. IInd party filed Written Statement at Page 6/1 to 6/5 Relief prayed by workman are opposed. That one Yadunandan Srivastava was working on daily wages in Kokar branch in 1985 from 9-12-96, he was not on duty. Therefore 1st party workman was temporarily engaged for cleaning of Bank premises and filling drinking water. Wages Rs. 5 per day were paid to him. That workman not completed 240 days service during any of the year. His working days are shown in para-3 of the Written Statement. That the guidelines issued provides full time messengers to the branches having business 30 Lakhs per annum. The minimum and maximum age is also prescribed. Workman was not fulfilling those conditions. He has not completed 240 days service. Kukar branch had no business of 30 Lakhs per annum. Workman has not passed 8th standard as usch he is not fulfilling eligibility criteria. The Services

of Shri Damodar Patel were regularized as part time messenger cum cleaner in 1987 and posted to Kokar branch from 1-2-91. It is submitted that public has right of employment in the Banks. If the services of workman regularized, it would amount to back door entry which is not permissible. On such ground, IInd party prays for rejection of claim.

5. Ist party workman filed rejoinder at Page 8/1 to 8/3 reiterating his contentions in Statement of Claim filed by him. The management filed rejoinder at Page 7/1 to 7/3 reiterating its earlier contentions in the Written Statment.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---------------------------------------|
| (i) Whether the action of the management of Durg Rajnandgaon Gramin Bank in relation to their Kokpur branch in refusing employment to Shri Dauram Sahu S/o Nammulal Sahu Messenger w.e.f. 3-2-91 is legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

7. Though the workman is challenging termination of his services by IInd party filed statement of claim and rejoinder, workman failed to adduce evidence. Evidence of workman is closed on 28-12-2010. Management filed affidavit of evidence of witness Shri Sanjay Kadam covering most of the point in written Statement filed by management. The workman remained absent and failed to cross-examine witness of management. As per evidence of management workman has not completed 240 days service. The breakup of working days is shown in para-5 of affidavit. Workman is not covered under Section 2(s) of I.D. Act therefore he is not entitled to protection under Section 25-F of I.D. Act. therefore termination of services of workman cannot be said illegal. For above reasons, I record my finding in Affirmative.

8. In the result, award is passed as under:—

- (1) Action of the management of Durg Rajnandgaon Gramin Bank in relation to their Kokpur branch in refusing employment to Shri Dauram Sahu S/o Nammulal Sahu Messenger w.e.f. 3-2-91 is legal.
- (2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2013

का०आ० 2347.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 67/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.10.2013 को प्राप्त हुआ था।

[सं एल-12012/42/2007-आईआर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th October, 2013

S.O. 2347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 67/07) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial dispute between the management of State Bank of Indore and their workman, received by the Central Government on 11.10.2013.

[No. L-12012/42/2007-IR (B-I)]
SUMATI SAKLANI, Section Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/67/07

PRESIDING OFFICER: SHRI R. B. PATLE

Shri Santosh Kumar Laxminarayana Yadav,
Golbazaar Ward No. 23,
Rajnandgaon (Chhattisgarh),Workman
Versus

Asstt. General Manager (Pancham),
State Bank of Indore,
Zonal Office, National Highway,
Telibandha,
Raipur (Chhattisgarh)Management

AWARD

Passed on this 25th day of September, 2013

1. As per letter dated 20.7.07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-12012/42/2007-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore in terminating the services of Shri Santosh Kumar Laxmi Narayan Yadav w.e.f. 25.5.06 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 2/1 to 2/4. The case of workman is that he was engaged as peon from 20.9.99 on daily wages Rs. 50 by the Branch Manager. His wages were increased to Rs. 60, 70, 75, 90, 100 & 110. He was paid wages for six days in a week. He was not paid wages for Sundays. That he had completed 240 days continuous service every year. His services were terminated without notice on 25.5.06, retrenchment compensation was not paid, pay in lieu of notice was not paid to him. That he is covered as workman under Section 25B of I.D. Act. This services are terminated in violation of Section 25F of I.D. Act. He had rendered unblemished service for 7 years. The principles of last come first go was not followed by IInd party while terminating his services. After his termination, IInd party engaged other daily wage employees. He was not given opportunity for re-employment. IInd party violated Section 25F of I.D. Act on such ground, Ist party prayed for reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 8/1 to 8/10, It is submitted that the State Bank of India is established under the Banking Company's Act 1959. The business of the Bank is controlled as per directions of RBI. The sub staff in Class-III, IV are appointed as per the rules with approval of Govt. of India. The post are required to be advertised. The names from Employment Exchange are called. Such procedure are not followed. It is denied that workman was appointed on the post of peon.

4. As per IInd party daily wage employees are engaged by bank for working 1-2 hours in morning, 2 hours in evening as regular peons are not doing such work. The workman was engaged as part time daily wage basis. He was paid wages. He is not regular employee of the Bank. He is not entitled for reinstatement, he is not entitled to protection of provision under I.D. Act, merely for completion of 240 days, he is not entitled for regularization. IInd party referred ratio held in different cases by the Courts and submits that Ist party workman is not entitled to reinstatement. That General Secretary Ram Nagwanshi is a dismissed employee of SBI, as such he is not competent to represent workman.

5. Ist party filed rejoinder at Page 9/1 to 9/3 reiterating his claim about termination of his services in violation of Section 25F of I.D. Act.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|-------------|
| (i) Whether the action of the management of State Bank of Indore in terminating the services of Shri Santosh Kumar Laxmi Narayan Yadav <i>w.e.f.</i> 25.5.06 is legal? | In Negative |
|--|-------------|

- | | |
|---|--------------------|
| (ii) If not, what relief the workman is entitled to?" | As per final order |
|---|--------------------|

REASONS

7. Before dealing with the dispute under reference in merit, I make it clear that though objection is taken for engaging Advocate by the management and IInd party has objected authority of Shri Ram Nagwanshi, General Secretary of Union to represent the workman. Both parties did not raise above point.

8. The termination of services of workman is challenged for violation of Section 25F of I.D. Act. IInd party submits that workman was engaged as part time daily wagger. He has not completed 240 days continuous service. Workman has filed affidavit of evidence. In para-3 of affidavit, he has stated that he was working for more than 280 days every year from 29.9.99 till 2006. That his services were terminated in violation of Section 25F. He was paid bonus by the IInd party. In his cross-examination, it is not challenged that the workman had completed 240 days continuous service. The workman in his cross-examination says that he was working in the Bank from 20.9.99 till 27.5.06 but documents are not with him. He was opening Bank, was doing cleaning work, was delivering dak. The cross-examination appears in the nature of confirmation of work rather than challenging his working in the Bank.

9. Management witness Shri Chandra Shekhar Kumbhalwar filed affidavit of evidence. In para-3 of the affidavit he has stated that workman had not worked 240 days in any year. Workman was engaged for cleaning work, he was working one hour morning, one hour evening, wages were paid to him for said work, his name was not sponsored from Employment Exchange. In his cross-examination, management witness says he was not working in the Branch during 1999 to 2006. He had not obtained any information from earlier Branch Managers working in the branch. His affidavit of evidence is filed after examining the record. The name of workman was not appearing in attendance register, pay register/salary register. He claims ignorance whether bonus was paid to the workman. However he admitted payment of bonus as per document Exhibit W-1. Other suggestions in his cross-examination are denied. He claims ignorance about payment of gratuity. He claims ignorance for how many days the workman was working. The documents is not produced that the workman is working only for 1 hour morning and 1 hour evening.

10. If evidence of witnesses is properly appreciated, the evidence of workman is not challenged that he had completed 240 days continuous service. Evidence of management's witness shows that he has no personal knowledge as he was not working in the branch during relevant period. Therefore the evidence of management's witness cannot be preferred to the evidence of workman.

11. Learned counsel for workman Shri Tripathi submits that burden lies on workman to prove that he was

working more than 240 days during calendar months preceding his termination. The ratio held in case of State of Karnataka and another *versus* S.T. Hadimani reported in 2002(3) Supreme Court Cases 25, Krishna Bhagyajal Nigam Ltd. *versus* Mohd. Rafi reported in 2006(9) Supreme Court Cases 697 & State of Haryana *Versus* Ramesh Kumar reported in 2008 (11) Supreme Court Cases 435 supports above arguments. However evidence discussed above is clear that there was no challenge to the evidence of workman that he had completed 240 days continuous service. The evidence of management's witness is not based on record. He has not enquired from his predecessor therefore the evidence is sufficient to hold that workman had worked for more than 240 days during 12 calendar months prior to his termination. He was part time daily wager. He is entitled to protection of Section 25-F of I.D. Act. The termination of his service is in violation of Section 25-F of I.D. Act. Therefore I record my finding in Point No. 1 in Negative.

12. Point No. 2—In view of my finding in Point No. 1, question arises whether the workman is entitled to reinstatement with back wages. Evidence shows workman was not appointed following recruitment process. He was working as part time daily wager. Considering termination of his services in violation of Section 25-F of I.D. Act, reinstatement with back wages would not be proper, reasonable compensation for termination of his service in violation of Section 25-F would be appropriate. In my considered view, considering period of service rendered by workman from 99 to 2006, compensation of Rs. 1,50,000 would be adequate. Accordingly I record my finding in Point No. 2.

13. In the result, award is passed as under:—

- (1) Action of the management of State Bank of Indore in terminating the services of Shri Santosh Kumar Laxmi Narayan Yadav *w.e.f.* 25-5-06 is illegal.
- (2) IInd party management is directed to pay Compensation Rs. 1,50,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer.

नई दिल्ली, 11 अक्टूबर, 2013

का.आ. 2348.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 98/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/10/2013 प्राप्त हुआ था।

[सं एल-41012/96/98-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th October, 2013

S.O. 2348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 98/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway, and their workmen, received by the Central Government on 11/10/2013.

[No. L-41012/96/98-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/98/99

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Arun Prakash,
S/o Rambux, R/O New Garibi Line,
Ward No. 11, Bada Pipal,
Itarsi

Workman

Versus

Divisional Railway Manager (P),
Central Railway,
Habibganj,
Bhopal (MP)

Management

AWARD

Passed on this 18th day of September 2013

1. As per letter dated 25-2-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-41012/96/98-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of DRM, Central Railway, Bhopal in terminating the services of Shri Arun Prakash S/o Rambux *w.e.f.* 26-8-91 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 2/2 to 2/8. The case of workman is that he was working as Gangman on Central Railway as a permanent employee of the Central Railway after due test and medical fitness on 11-8-86. He was posted to work under PWI, Central Railway, BIR station. That he had entered in Railway service on 11-7-83. He worked as Khalasi under Inspector of Works, Central Railway, Itarsi on daily wage basis. He was posted as Gangman from 11-8-96. He was not allowed any kind of leave by PWI BIR. He was not granted medical treatment by Railway doctor. He was putting up at Bir without the

provision of Railway quarter though it was essential as per Railway Rules. That family members of applicant was not putting up at Bir due to proper quarter and he was sick, hence he had to leave BIR and proceed for Agra. That he received treatment from Dr. H.B. Singh at Agra. He had also informed PWI BIR by postcard about his treatment at Agra. That he received treatment from Dr. H.B. Singh during the period 8-9-87 to 27-8-88. That he had produced Medical Certificate before PWI BIR while reporting on duty. He was allowed to resume duty and then send to Railway Doctor for medical examination about his fitness for duties.

3. Workman further submits that he was found fit by the Doctor and Certificate No. 22 was received on 28-9-88 by Medical Officer, Central Railway Bhopal. There was no adverse remark. The chargesheet was issued to him on 13-9-88 by Asstt. Engineer through PWI BIR on the allegations related to absence from duty from 8-9-87 to 27-8-88.

4. Ist party workman submits that enquiry was conducted without following proper procedure. He was not allowed proper opportunity for his defence. Principles of natural justice were violated, copies of enquiry Proceedings were not supplied to him. Other grounds are alleged by him and enquiry conducted against workman is found illegal and management was granted permission to prove misconduct adducing evidence. Other details are not narrated. Ist party workman submits appeal preferred by him to DRM was rejected without assigning reason. That he had submitted representation to General Manager. It was not properly considered. That termination of his services is not proper, justified. He prays for his reinstatement in service with consequential benefits.

5. IInd party management filed Written Statement at Page 4/1 to 4/5 IInd party submits that workman remained absent from duty without sanctioned leave. As such his absence from duty was not authorized. Railway quarters were limited, it could not be provided to workman. It is denied that the applicant was transferred to BIR as Gangman. It is reiterated that workman was posted at Khandwa in Bhopal Division. It is denied that the Ist party workman had produced Medical Certificate, fitness certificate. It is denied that after his joining, he was send for medical checkup. Rather it is submitted that after joining, certificate No. 22 issued by Medical Officer was submitted. The chargesheet was issued to the workman. Enquiry was conducted following rules. Principles of natural justice were followed. Enquiry is legal. The punishment of termination of service is legal. IInd party prays for rejection of claim of workman.

6. Ist party workman filed exhaustive rejoinder at Page 6/1 to 6/11 reiterating his contentions in statement of claim. He has also pleaded about production of his Medical Certificate receiving treatment from Doctor H.B. Singh at Agra. That the punishment of removal is illegal. The enquiry conducted against workman is not proper.

7. The enquiry is found illegal by my predecessor as per order dated 5-5-2011. The management was permitted to prove misconduct adducing evidence.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---|
| (i) Whether the misconduct of unauthorized absence is proved by the management? | In Affirmative |
| (ii) Whether the punishment of termination from service of Ist Party workman is proper? | Punishment of termination of service of Ist party workman is illegal. |
| (iii) If so, to what relief the workman is entitled to?" | As per final order |

REASONS

9. As stated above, enquiry conducted against workman was found illegal by my predecessor as per order dated 5-5-2011. Other issues are not found on record. Therefore the points for determination framed above relates to the proving of misconduct by management, legality of the termination from service and reliefs to the workman entitled. Management filed affidavit of witness Shri Ramlal. Above witness of the management stated that he was working as Time Keeper PWI (BIR) during 84 to 89. He knows workman. He was unauthorisely absent from duty from 8-9-87 to 27-8-88. His evidence is further devoted about taking entries, about absence from duty on sick leave. If the employee remains absent, the wages are not paid, the payment of wages is shown in the wage sheet. The above witness in his cross-examination says that affidavit of his evidence is prepared looking to the attendance register. During the relevant period, he was working as Asstt. Time Keeper. When the labour was absent any intimation was not given to him. Leave Register was maintained. He had seen entries in the leave register while preparing affidavit. It does not show that the workman submitted sick certificate. The evidence about absence of workman from duty is not shattered in cross-examination of the witness. The workman filed affidavit of his evidence. He has stated that he had asked for leave from PWI BIR as he was not feeling well, he was not provided Railway quarter. His family was living at his home. During his sickness, he had contacted Railway Medical Officer Harda but he refused to put him in sick leave. That he received treatment from Private Doctor. He was allowed to leave hqr. by PWI BIR. That he received treatment from Dr. H.B. Singh Agra from 8-9-87 to 27-8-88. That he was sent for Medical Examination to DMO, Bhopal. He was granted certificate No. 22 dated 28-9-88. In his cross-examination, workman admits that Railway employee first used to take treatment in Railway Hospital. In case he is not cured, such employee used to be referred to other hospital. He has submitted application for leave to

PWI BIR. That his statement in affidavit that he orally informed PWI and proceeded on leave is true. Thus the evidence of workman about submitting application for leave is not consistent and can hardly be relied. Workman in his further cross-examination says that he was ill and he was at his home at Itarsi. He had visited Itarsi Hospital. It is true that employees working at BIR, Nepanagar, Khandwa Railway Hospital Khandwa is made available. He admits that certificate of fitness used to be issued by Railway Hospital Itarsi and he had been referred for medical examination. He denies that he had not produced any document from Railway Hospital Itarsi. He admits that attendance was marked in CMR sheet. As per entry in CMR, payment-sheet was prepared by Time Keeper and accordingly were paid. The evidence of workman about submitting application for leave on permission to leave headquarter by PWI is not cogent and reliable.

10. The documents produced by management at the stage of argument are admitted by workman and marked as Exhibit W-3 & W-4. The document Exhibit W-4 is certificate issued by Dr. H.B. Singh dated 28-8-88. That the workman was suffering from acute psychosis. He was under treatment during the period 8-9-87 to 27-8-88. Above certificate produced by management is admitted. There is no reason to discard said certificate produced by the management. From above certificate, it is clear that workman was suffering from acute psychosis (illness).

11. Certain documents produced by parties needs to be considered. Exhibit W-2 produced by workman himself to letter issued by Railway about rejection of his appeal, Copy of Railway Establishment Rule, Medical Attendance Rules, Private Medical Certificate is produced on record. The relevant rules provide where the Railway servant remains on medical leave upto and including 3 days duration and reported back for duty with a Fitness Certificate from the Railway medical Officer, subject to the condition that the employee furnishes declaration that he had not suffered during this period from eye disease. In other cases when the duration of sickness is more than three days, the Railway employee should be put back to duty within 24 hours on his producing fitness certificate from a Private Medical Practitioner. The absence from duty of workman is proved from evidence of management's witness and attendance sheets which seems 388 days. Therefore the rules discussed above do not permit workman to resume duty on producing certificate issued by Private Doctors. The attendance sheets produced on record, entries against name of Ist party workman Shri Arun Prakash S/o Rambux do not bear sick marks. The absence from duties for period stated above is undisputed. What workman is claiming while he had applied for leave, leave was not granted. He had requested permission to leave headquarter from PWI BIR but above contentions of the workman are not substantiated from evidence of any witness and there is absolutely no evidence to support above claim of workman.

Therefore undisputed absence from duties, without satisfactory explanation for permission to leave headquarter, without application for grant of leave certainly is a misconduct. As such the misconduct against workman is proved therefore I record my finding on Point No. 1 in Affirmative.

12. Point No. 2—

In view of my finding in Point No. 1, the absence of Ist party workman for 388 days without permission, without sanctioned leave has been established, question is whether the punishment of termination for absence from duty for such period is justified and legal? The disciplinary authority has not discussed why punishment of termination from service is imposed on the workman. The Railway Servants (Discipline & Appeal) Rules by Shri M.L.J and made available. Rule-6 provides—

"Penalties and Disciplinary Authorities provides minor penalties—

- (i) Censure,
- (ii) Withholding of his promotion for a specific period,
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Govt. or Railway Administration by negligence or breach of orders,
- (iii-a) withholding of the privilege Passes or Privilege Ticket orders or both,
- (b) reduction to a lower stage
- (iv) withholding of increments of pay for a specific period.

Major Penalties—

- (v) Reduction to the lower stage,
- (vi) Reduction to a lower time scale of pay, grade, post or service,
- (vii) Compulsory retirement,
- (viii) Removal from service,
- (ix) Dismissal from service

Competent Authority absolutely did not give any reason why only punishment of termination of service is imposed.

13. The evidence on record shows that for absence from duties of workman any kind of loss was not caused to the Railway even the documents produced by management Exhibit M-1 the certificate issued by Dr. H.B. Singh so that the workman was suffering from acute psychosis during the relevant period. When the workman was suffering from acute psychosis, he had received treatment from Private Doctor, instead of Railway hospital as per rules of the Railway Administration. The violation of such rules cannot

be said intentional if the treatment would have been provided in Railway hospital to the workman, there would have been no necessity for him to go to Agra and received treatment from Private Doctor. The management has not adduced evidence that the treatment for the illness of acute psychosis is available in hospitals at Nepanagar, Khandwa etc. Above discussion clearly shows that absence from duty could not be a serious misconduct when the employee himself was suffering from illness. Therefore the punishment of termination of service imposed by the competent authority without assigning reasons cannot be said proper or justified.

14. Learned counsel for workman Pranay Choubey relies on ratio held in case of Shri Gopal Prasad Thakur versus State of Jharkhand and ors reported in W.P.No. 4919 of 2005 by Jharkhand High Court. In para-8 of the judgement, his Lordship has observed factual matrix about the charges related to the each other. Charge No. 2 itself makes clear that charges for unauthorized absence from service from 5-11-99 to 9-11-99, salary of petitioner was withheld. With respect of charge No. 3,4 I find that petitioner has already been punished. It appear that charge no. 3,4 have been included in the charge memo dated 16-1-2000 only for the purpose of looking into the past misconduct of the petitioner. In the net result, only charge No. 1 which relates to unauthorized absence from 5-11-99 to 9-11-99 was left for consideration by the Inquiry Officer. The Enquiry Officer submitted report holding that charge No. 1 is found true against the petitioner. The facts of above cited case are not comparable and therefore the judgment that conversion of punishment from dismissal to compulsory retirement cannot be beneficially applied to case at before me.

15. The facts of the present case is not comparable, Ist party was basent from duty for 388 days. He had not submitted application for leave, he has not produced evidence about permission to leave headquarter and therefore his absence amounts to misconduct. However the punishment of removal from service, dismissal from service are the extreme punishments. To be specific, the punishment of dismissal from service causes civil death of the employee and also affects to hold family of the employee. Therefore the termination from service of workman cannot be sustained, it deserves to be quashed and set aside.

16. Next question is whether the back wages claimed by workman be allowed. Misconduct is proved. For proved misconduct, awarding back wages be amount to the premium. The workman had service of hardly 2-3 years prior to his absence from duty. No evidence is adduced of the kind of leave was to his credit. Different rules are provided in Railway Rules. The leave to his credit needs to be compensated. Keeping above aspects in view, and proved misconduct of the workman, reinstatement of workman without backwages with continuity of service

would be appropriate. Accordingly I hold and pass the following award—

- (1) The action of the management of DRM, Central Railway, Bhopal in terminating the services of Shri Arun Prakash S/o Rambux *w.e.f.* 26-8-91 is illegal.
- (2) IInd party is directed to reinstate the workman in service with continuity of service without back wages but Ist party workman would be entitled to payment of wages for leave at his credit prior to termination of his service. IInd party is directed to pay wages for the leave in credit within 30 days.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 अक्टूबर, 2013

कांआ 2349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या 73/98 को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/10/2013 को प्राप्त हुआ था।

[सं० एल-12012/205/97-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th October, 2013

S.O. 2349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the Award (Ref. 73/98) of the Cent.Govt. Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 11/10/2013.

[No. L-12012/205/97-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/73/98

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Dilharan Lal Yadav,
S/o Shri Roos Ram Yadav,
Gram Jonki,
PO Sakari,
Bilaspur (MP)

....Workman

Versus

Reginal Manager,
State Bank of India,
Regional Officer, Region-II,
Nehru Nagar,
Bilaspur (MP)

....Management

AWARD

Passed on this 19th day of September, 2013

1. As per letter dated 29-4-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/205/97-IR (B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of India, Kothari Branch, distt. Bilaspur in terminating the service of Shri Dilharan Lal Yadav S/o Roosu Ram Ex-Waterman from service of the Bank w.e.f. 31-10-96 is justified? if not, to what relief the workman is entitled to"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 6/1 to 6/3. The case of Ist party workman is that he was employed temporarily on daily wages as waterman in Kothari Branch of SBI from 1-9-89. He was doing work of water man and messenger boy. He was working for 9 years. His service record was satisfactory. He worked with devotion and honesty. The Branch Manager had issued certificate commending his contribution and cooperation in loan recovery campaign. That in 1995, the Branch Manager recommended his name for appointment as part time basis. Considering his hard work and cooperative nature. That in 1996, Branch Manager recommended the workman for appointment on 1/3rd pay as part time workman according to clause No. 3a(a) of Chapter II of handbook on staff matter. That he worked till October 96 for all 465 days in each of the calendar year from 1992 till 1995. That his services were terminated without giving any reasons, no notice issued to him. Retrenchment compensation was not given. He was not paid salary in lieu of notice. That his services are terminated in violation of Section 25-F of I.D. Act. on such grounds, the workman prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 7/1 to 7/8. The claim of Ist party workman is denied. IInd party submits that workman was employed as temporary employee as waterman for storing and filling water at Kothari branch of the Bank. He was engaged from 1989 to 1996. When occasion arose, he also did work of sweeper cum farrash. His services were utilised intermittently. He has also worked as messenger and other miscellaneous works. The details of working days are given. In 1989 he worked for 3 days, in 1990 for 13 days, in 1991 for 13 days, in 1993 for 13 days, in 1994 for 11 days, in 1995 for 31 days and in 1996 for 28 days. As such the workman had worked for total 112 days during 1989 to 1996. He was engaged for specific work. His discontinuation is covered under section 2(o) (bb) of I.D. Act. It is submitted that workman had not completed 240 days continuous service therefore notice of termination was not preferred. Workman was working 2 hours thrice a day. The branch was converted into satellite

office w.e.f. 31-10-96. There was no need of storage water supply at the branch etc. the work is not available as such discontinuation of services of workman is legal.

4. Rejoinder is filed by workman at Page 9/1 to 9/2 reiterating his contention in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------------------------|
| (i) Whether the action of the management of State Bank of India, Kothari Branch, distt. Bilaspur in terminating the service of Shri Dilharan Lal Yadav S/o Roosu Ram Ex-Waterman from service of the Bank w.e.f. 31-10-96 is legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to? | Relief prayed by workman is rejected. |

REASONS

6. Workman is challenging termination of his service on the ground of violation of Section 25-F of I.D. Act. He has filed affidavit of evidence covering the contentions in Statement of claim. That his services were terminated without notice, no retrenchment compensation was paid to him. The letters issued by Manager are produced. In his cross-examination workman says that in 1989 he worked for 3 days, in 1991 for 13 days, in 1993 for 5 days, in 1995 for 11 days and in 1996 for 13 days. He was doing other miscellaneous work. In his further cross-examination, he claims ignorance whether after change in the Bank work, whether the Bank is working for 2 hours in 3 days in a week. The evidence of workman in cross-examination clearly shows that workman had completed 240 days continuous service during 12 calendar months preceding to his retrenchment.

7. Management filed affidavit of evidence of Shri J.K. Day supporting most of the contentions in Written Statement filed by the management. That Ist party workman had worked for 50 days temporary messenger, he worked for 112 days during 1981 to 1996. He had not completed 240 days continuous service. Evidence of management witness remained unchallenged as workman and his Advocate were absent and failed to cross-examine the witness. Thus I find no reason to disbelieve evidence of management's witness. The evidence in cross-examination of Ist party workman corroborate evidence of management's witness as workman has not, completed 240 days continuous service during preceding 12 months of his termination. He is not entitled to notice or retrenchment compensation provided under Section 25-F, clause 1(a)(b) of I.D. Act. As he is not covered as workman

under Section 25-B of I.D. Act, he is not entitled to claim relief under Section 25-F of I.D. Act. Therefore termination of services of workman cannot be said illegal. For above reasons I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

- (1) Action of the management of State Bank of India, Kothari Branch, distt. Bilaspur in terminating the service of Shri Dilharan Lal Yadav S/o Roos Ram Ex-Waterman from service of the Bank w.e.f. 31-10-96 is legal.
- (2) Relief prayed to workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2013

का०आ० 2350.—औद्योगिक विवाद अधिनियम, 1947, 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक, हैदराबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या 197/95 को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/10/2013 को प्राप्त हुआ था।

[सं० एल-12012/149/94-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th October, 2013

S.O. 2350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 197/95) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Hyderabad and their workmen, received by the Central Government on 11/10/2013.

[No. L-12012/149/94-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/197/95

PRESIDING OFFICER: SHRI R. B. PATLE

Shri Sanjay Kumar Lokhande,
128/2, Sarvahara Nagar, Indore

....Workman

Versus

Regional Manager,
State Bank of Hyderabad,
Kolaba, Mumbai

....Management

AWARD

Passed on this 20th day of September, 2013

1. As per letter dated 27-10-95 by the Government of India, Ministry of Labour, New Delhi, the reference is

received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/149/94-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Hyderabad in terminating the services of Shri Sanjay Kumar Lokhande, Peon Indore Branch w.e.f. 18.3.89 is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 6/1 to 6/5. The case of Ist party is that there were clear vacancy of 2 post of peon in branch office of IInd party at Indore. Vide order dated 10.1.89 Branch Manager called list of 40 eligible person from Employment Exchange for 2 vacant posts of peon. List was furnished on 25.9.88. Only 20% from said list. Only 20% from said list were called for interview. Subsequently IInd interview was held of 10 candidates out of 20. Remaining candidates were not considered. Final interview was partly taken. Ist party had scored highest mark. He was selected for post of peon. The Head Office instructed IInd party by Telephonic message to utilize his services alongwith one Rajendra Kumar. After selection the Branch Manager filed letter dated 18.1.1999 informing Employment Exchange office that Ist Party was selected for post of peon. His name was truck from list of unemployed persons. Ist party however did not receive letter of appointment. He was engaged but the workman was not specific, period was not specified by IInd party.

3. There were clear vacancies despite of it, his services were terminated by IInd party without issuing notice. No reasons were given for termination of his service. That termination of his services were in violation of Section 25-G of I.D. Act. One Pawan Kumar and Rajendra Kumar was not sponsored by Employment Exchange required as per the rules. They were selected showing favour. It is alleged that IInd party violated Articles 14, 16, 21 of constitution. Provisions of Section 25 T, 25 U & 34 of I.D. Act are violated by IInd party. That his several applications were not considered by IInd party for reinstatement. On such grounds, he prays for his reinstatement with consequential benefits.

4. IInd party filed Written Statement at Page 10/1 to 10/4. The relief prayed by Ist party are opposed. IInd party submits that Ist party worked on daily wages on contractual basis only for three days unless the workman works for 240 days during the calendar his termination does not amount to retrenchment. The reference is not tenable. Violation of Section 25-F, G & H is denied. That applicant had not worked even for 50 days during 12 calendar months preceding his termination.

5. It is submitted by IInd Party that Ist party workman was appointed purely on daily wage basis. After his name was sponsored through Employment Exchange against

two vacant post of peon. He joined his duty on 20.1.1989. His services were on temporary basis to meet their increased work load. He was paid wages proportionately as daily wage peon. Ist party worked only for 47 days therefore there is provision of Section 2(o)(o), Section 25-F are not applicable. Those contentions are repeatedly reiterated by IInd party. It is submitted that there was no violation of Section 25-F, G of I.D. Act. IInd prays for rejection of claim.

6. Ist party filed rejoinder at Page 13/1 to 13/2 reiterating its contention in his statement of claim. That his name was sponsored through Employment Exchange for vacant post. That he could not be dismissed without notice.

7. IInd party submitted reply to rejoinder at Page 11/1 to 11/2 denying contentions raised by workman that the name of workman was sponsored for regular appointment of two vacant post of peon.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:

- | | |
|---|---------------------------------------|
| (i) Whether the action of the management of State Bank of Hyderabad in terminating the services of Shri Sanjay Kumar Lokhande, Peon Indore Branch w.e.f 18.3.1989 is legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to? | Relief prayed by workman is rejected. |

REASONS

9. Though workman is challenging legality of termination of his service, has submitted his statement of claim as discussed above. Workman fails to adduce any evidence to substantiate his claim. His evidence is closed on 25.2.2011. Management filed affidavit of its witness Ravi Kumar Shukla. The management's witness has covered most of the contentions in Written Statement filed by IInd party that workman had not completed 240 days continuous service. He had worked on daily wages only 47 days. That the Ist party workman was engaged purely on daily wage basis. That provisions of Section 2(oo) read with Section 25-F are not violated. The evidence of management's witness remained unchallenged as Ist party failed to cross-examine. I do not find reason to discard unchallenged evidence of management's witness. Workman failed to adduce evidence to establish illegality of his termination of service. Therefore I record my finding in Point No. 1 in Affirmative.

10. In the result, award is passed as under:—

- (1) Action of the management of State Bank of Hyderabad in terminating the services of Shri

Sanjay Kumar Lokhande, Peon Indore Branch w.e.f. 18.3.89 is legal.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2013

कांआ 2351.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक आफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या 173/2001 को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/10/2013 को प्राप्त हुआ था।

[सं एल-12012/265/2001-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th October, 2013

S.O. 2351.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 173/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 11/10/2013.

[No. L-12012/265/2001-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/173/2001

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Dainik Vetan Bhogi Karmchari Sanghathan,
Indore

....Workman/Union

Versus

Dy. General Manager,
State Bank of Indore,
Zonal Office, Kanchanbagh,
Indore

....Management

AWARD

Passed on this 23rd day of September, 2013

1. As per letter dated 15-11-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/265/2001-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore, Zonal Office, Kanchanbagh in not giving

permanent appointment to Shri Santosh Kumar *w.e.f.* 1.8.94 is justified? If not, what relief he is entitled?"

2. After receipt of reference, notices were issued to the parties. Ist Party workman submitted statement of claim at Page 5/1 to 5/6. The case of Ist Party workman is that his elder brother was working in State Bank of Indore Branch Nimadkhedi, Distt. Khandwa from 1.5.92. He was called to work at Branch Rajgarh from 18.1.94. He was paid wages Rs. 40/- per day. After the said post of lying vacant, Ist Party workman was engaged from 1.8.94 for cleaning, dusting etc. work. That he was performing his duties honestly with devotion. That he was paid wages in different names. The payment vouchers were prepared by Ramesh working as peon. It is further submitted that the IInd Party instead of submitting reply in the dispute, he was asked to sign on the documents under the threat that he would be handed over to police if he fail to sign the documents. Under such compelling circumstances, he had signed documents asked by Branch Manager Mr. Tiwari.

3. Ist Party workman further submits that he was working continuously for more than 240 days since 1.8.94. He is covered as workman under Section 25(B) of I.D. Act. He was working in the Bank till 2.7.02. His services were terminated without notice or paying retrenchment compensation in violation of Section 25-F of I.D. Act. It is further submitted that principles of last come, first go were not followed. Other employees were engaged after termination of his service. IInd Party violated Section 25-H, N of I.D. Act on such contentions, Ist party workman is praying for his reinstatement with consequential benefits.

4. IInd Party filed Written Statement at Page 7/1 to 7/8. Claim of Ist Party workman is totally denied. IInd Party submits that daily wagers are engaged whenever there is work load. Daily wagers have to fulfill certain requirements of qualification, their names should be sponsored through Employment Exchange. Panel of daily rates casual labours is maintained district wise. They are regularized as per their seniority as and when vacancy arise. That workman was engaged as daily rated casual labour in Nimkhedi branch for 2-3 hours. He was not appointed by Bank, no appointment letter was issued to him. His engagement came to an end each day after working hours. Ist Party not undergone recruitment process. There is no employer employee relationship. IInd Party quoted ratio held in several case by the Apex Court and other courts and submits that the Ist Party is not entitled for regularisation. The reference is bad on the ground of latches/delay. That Union Secretary Shri Ram Nagwanshi is a dismissed employee of SBI, he is not competent to represent workman. On such grounds, IInd Party prays for rejection of claim of Ist party workman.

5. Ist Party filed rejoinder at page 9/1 to 9/3 reiterating his contentions in Statement of Claim. That the termination of his services is illegal. That workman was paid bonus.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---------------------------------------|
| (1) Whether the action of the management of State Bank of Indore, Zonal Office, Kanchanbagh in not giving permanent appointment to Shri Santosh Kumar <i>w.e.f.</i> 1-8-94 is legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

7. As per terms of reference, IInd Party Bank not giving permanent appointment to Shri Santosh Kumar *w.e.f.* 1-8-94 is referred for adjudication by this Tribunal. However the statement of claim filed by Ist Party workman refers to termination of his services from 2-7-02 in violation of Section 25-F, G & H of I.D. Act. Statement of claim is silent about regularization claimed by workman. The affidavit of evidence filed by workman is devoted on the point he had completed 240 days service every year after 1-8-94. That he was continuously working with the Bank till 2-7-02. His services were terminated without notice or without paying retrenchment compensation. His affidavit of evidence is silent under what Rule or settlement, the workman is claiming regularisation of his service.

8. In his cross-examination, workman says he was working as daily wage casual labour, his name was registered in Employment Exchange. His written test was not held. That the dispute raised before ALC was he was terminated from service and he prayed for reinstatement. That reference is made that his services would be made permanent. Thus the claim of workman in his statement of claim and affidavit of evidence is not consistent with the terms of reference.

9. Management filed affidavit of evidence of witness Jitendra Kumar Navlakhe covering the contentions of IInd Party management in its Written Statement are supported by the witness in his affidavit. That workman has challenged termination of his service whereas the reference relates to regularization of his service. That workman was not continuously working in the Bank from 1-8-94 till 2-7-2002. In his cross-examination, management's witness says he had seen attendance register of workman but any documents are not produced by him. He had no talk with other Branch Managers Mr. Saxena, Tiwari, Kesharva, Bamne prior to filing affidavit of evidence. Workman was paid wages weekly, vouchers were not available. The evidence of management's witness is in the form of denial of claim of workman. As stated above, the terms of reference

and claim of workman are not consistent. The evidence of workman is clear that he had not undergone selection process.

10. On the point whether workman is entitled for regularization. IIInd Party relies on ratio held in:—

Case of Hindustan Petroleum Corporation Ltd. *versus* Ashok Ranghba Ambre reported in 2008-2-SCC-717. Their Lordship of the Apex Court dealing with the question of setting aside the termination or violation of Section 25-F held. The termination doesnot necessarily follow that workman is entitled to status of permanency and claims for regular pay scales. The word regular and regularization donot connote "permanence".

Next reliance is placed in case of Mahboob Deepak *versus* Nagar Panchayat, Gajraula and another reported in 2008(1) Supreme Court Cases 575. Their Lordship in para-8, 9 of the judgment held respondent is local authority, no appointment can be made by lcoal authority without following the provisions of recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

Their Lordship have further held that Appellants claim for regularization is not sustainable having regard to the fact that he had not completed 240 days work and required compliance with the provisions of Section 6-N of the UP Industrial Disputes, Act, the workmen should be granted adequate monetary compensation, so the appellant is entitled to compensation, notice and notice pay. A sum of Rs. 50,000 by way of damages is made to the appellant."

11. In the present case, ratio held in those cases cannot be applied as the claim of workman is beyond terms of reference. The termination of services is not covered by the reference. Considering the facts and evidence on record, the ratio relied in Case of Samishta Dube *versus* City Board Etawah and another reported in 1999(81)FLR 746, Hindustan Petroleum Corporation Ltd. *versus* Ashok Ranghba amber reported in 2008(2) Supreme Court Cases 717 needs more clear discussion. For reasons discussed above, I record my finding on Point No. 1 in Affirmative.

12. In the result, award is passed as under:—

(1) Action of the management of State Bank of Indore, Zonal Office, Kanchanbagh in not giving permanent appointment to Shri Santosh Kumar *w.e.f.* 1-8-94 is legal.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer.

नई दिल्ली, 11 अक्टूबर, 2013

का०आ० 2352.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंदौर प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 171/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.10.2013 को प्राप्त हुआ था।

[सं० एल-12012/279/2001-आईआर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th October, 2013

S.O. 2352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 171/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of Indore and their workmen, which was received by the Central Government on 11.10.2013.

[No. L-12012/279/2001-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/171/2001

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,

Dainik Wetan Bhogi Bank Karamchari Sangthan,

9, Sanwer Road, Hardeo Niwas,

Ujjain

....Workman/Union

Versus

Dy. General Manager,

State Bank of Indore

(now merged as State Bank of India),

Zonal Office, Kanchan Bagh,

....Management

AWARD

Passed on this 20th day of September 2013

1. As per letter dated 15-11-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/279/2001-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore (merged as State Bank of India) in not regularizing the services of Shri Ajay Malkar, Daily wage employee but terminating his services *w.e.f.* January 1998 is legal? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through Daily Wage Bank Employees Union. The statement of claim is not properly drafted. It is unusual to see that in para-11 of statement of claim, one photo of workman with the other Union office bearer has been affixed in ignorance of the rules. The Ist party Union has reproduced circular dated 29-8-89 that powers for appointment of casual employees is seized to continue. Circular dated 29-8-89, 7-9-92 provides that despite of the circulars were issued, daily wage employees for cleaning etc. work were continued. That as per circular dated 24-12-96, casual employee should not be allowed to work for more than 75 days.

3. Ist party submits that he was working in Rajmohalla branch, Indore on daily wages Rs. 40 per day from 10-10-94. He was paid wages for six days in a week. The detailed particulars of payment of wages are shown in Para-8 that from 10-10-94, he was continuously working till discontinuation of his service in 1988. That he was paid wages Rs. 50/- per day. That he had completed 240 days continuous service during each of the year. Ist party workman has given details of the meetings of the conciliation proceeding and discussions taken place between parties. Ist party further submits that he is covered as workman under Section 25(N) of I.D. Act. His services are terminated without paying retrenchment compensation, without issuing notice in violation of Section 25-F, he was not paid bonus. Othr employees were employed in his place. Workman was not given opportunity of employment violating Section 25-H of I.D. Act. On such ground, workman prays for his reinstatement with consequential benefits.

4. IInd party filed Written Statement at Page 6/1 to 6/8. The claim of Ist party workman is denied. IInd party submits that Daily Wages employees are engaged when there is temporary workload. Daily wages have to fulfil certain requirements regarding their qualification, age etc. and also should be sponsored by Employment Exchange. He was not qualified to be engaged on daily wages. That he was engaged as daily rated casual labour in Rajmohalla Branch, Indore for 2-3 hours at the rate agreed by him for the purpose of cleaning and sweeping of the branch premises as and when required basis. That the dispute is not covered under Section 2 of I.D. Act. there is no employee employer relationship between Ist party and the Bank.

5. Next it is submitted that Shri Ram Nagwanshi is a dismissed employee and claims to be General Secretary of the Union representing claim of the workman. As per ratio held in AIR 1996-SC-Page 1865, he is not competent to be Union Representative. IInd party referred to the ratio held in various cases and submits that Ist party workman is not entitled to regularization. He was not appointed against sanctioned post. Workman is not entitled to relief claimed

by him as workman has not completed 240 days continuous service cannot be regularized. On such grounds, IInd party prays for rejection of claim of workman.

6. Ist party Union has taken objection for engaging Advocate by IInd party.

7. Rejoinder is filed by Ist party at Page 12/1 to 12/3 reiterating its contention in Statement of Claim. That workman was allowed to work for six days in a week. Workman was paid his wages under bogus bills of different categories. He was not paid retrenchment compensation. Termination of his service is illegal. Muster roll was not maintained by IInd party is violation of Section 25-B of I.D. Act. Bipartite Settlement are not followed. On such grounds, Ist party prays for his reinstatement.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------------------------|
| (i) whether the action of the management of State Bank of Indore (merged as State Bank of India) in not regularizing the services of Shri Ajay Malkar, Daily wage employee but terminating his services w.e.f. January 1998 is legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

9. Ist party workman is challenging termination of his services alleging that IInd party violated Section 25-F, G & H of I.D. Act. He was not given opportunity and other person was given opportunity to be engaged in his place.

10. Workman filed affidavit of his evidence covering most of his contentions in Statement of Claim. That he was working in bank from 10-10-94. He worked continuously for more than 240 days. He was paid wages Rs. 40, 50 per day. The wages were paid to him after deducting wages for Sunday. His services were terminated without giving notice, without paying retrenchment compensation. That the different kinds of bills were submitted to Branch Manager and his signatures were obtained on it. Details stated in Para-3 of the affidavit. The vouchers used to be submitted with the cashier under different types. In his cross-examination, workman says that he had not stated to Nagwanshi while submitting his statement of claim. The statement of claim is different from the terms of reference. That he was engaged on daily wages, he was paid Rs. 40 per day. Other 4-5 permanent peons were working in the Branch. Regular peon gets salary Rs. 10,000 per month. He

had not received letter of appointment. His attendance was not maintained in the register by the Bank. He was paid wages Rs. 50/- per day from 26-10-98. That he was continuously working in the bank from 10-10-94 to 26-10-98. He had claimed bonus. He claims ignorance how appointments of regular employees are made.

11. Documents Exhibit W-1 is circular dated 24-12-96. In case of exigencies, daily wage employees can be engaged for maximum 75 days. Exhibit W-2 is payment of wages @ Rs. 350 per month. Exhibit W-2(a), 2(b), (c) are about payment of wages at Rs. 50/- per day.

12. Shri Ram Nagwanshi, Secretary of Union filed affidavit of his evidence to support claim of workman. He has stated in his affidavit that from 1994, he was transferred from Yashwantpur Branch Indore to Rajmohalla Branch Indore as Asstt. Cashier. He was dealing with payments. That Ajay Kumar Malkar was paid Rs. 40/- per day from 10-10-98. The witness has further stated in his affidavit that Shri Ajay Malkar was paid amount in the form of Rikshaw charge. The wages of Shri Mayaram, Laxmi Narayan Sharma, Laxmi Narayan Purohit, Pradeep Raverkar and Dilip were paid in the name of bogus distribution of letters. The bogus payment in the form of Rikshaw charges etc. was paid to Shri Ajay Malkar. In his cross-examination Shri Nagwanshi says that he is hold in authority as Union Representative for workman and he is also deposing as witness in his official capacity. The evidence of Shri Ram Nagwanshi cannot be relied as he is spouting the claim of Ist party workman. He was working as Asstt. Cashier in Bank. He was preparing bogus claim of Rikshaw charges in the names of regular peon. If his evidence is accepted, he committed illegal acts by preparing illegal bogus vouchers for payment to the workman. Ist party workman has not examined any co-worker. He has not proved any other documents about payment of wages of salary in his name. The claim of workman based on illegal vouchers and payments made to him cannot substantiate his claim that he was continuously working more than 240 days during each of the calendar year.

13. Management filed affidavit of witness Shri Harinath denying that workman was continuously working from 10-10-94 to 16-10-98. That the workman was engaged for 1-2 hours for cleaning work. In his cross-examination, management's witness says that his evidence in affidavit that workman was engaged for 1 hour morning, 1 hour evening is based on the record. Such record is not maintained. Again he says that he is not able to tell for how many days the workman has worked on daily wages, the record is destroyed.

14. The burden lies on workman to prove that he was continuously working for more than 240 days. Counsel for IInd party submits that burden is not discharged. As per

terms of reference, Ist party was terminated in January 1998. Evidence is adduced that he was working till 26-10-98. The evidence is not consistent.

15. Reliance is placed by counsel for IInd party on ratio held in—

"Case of Samishta Dube versus City Board Etawah and another reported in 1999(81)FLR 746, Hindustan Petroleum Corporation Ltd. versus Ashok Ranghba amber reported in 2008(2) Supreme Court Cases 717. Their Lordship held setting aside the action of termination of service violative of Section 25-F doesnot necessarily follow that the workman is entitled to status of permanency.

In case of Mahboob Deepak versus Nagar Panchayat, Gajraula and another reported in 2008(1) Supreme Court Cases 575. The ratio deals with the adequate monetary compensation to be paid to workman.

16. From reasons discussed above, evidence adduced by workman is not cogent to establish that he has completed 240 days continuous service preceding 12 months from his termination of service. Therefore he is not entitled to protection under Section 25-F of I.D. Act. The evidence of workman is silent who was employed after termination of his service. As such violation of Section 25-H is not made out. Therefore record my findings on Point No. 1 in Affirmative.

17. In the result, award is passed as under:—

(1) Action of the management of State Bank of Indore (merged as StateBank of India) in not regularizing the services of Shri Ajay Malkar, Daily wage employee but terminating his services *w.e.f.* January 1998 is proper.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 11 अक्टूबर, 2013

का०आ० 2353.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंदौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 206/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/10/2013 को प्राप्त हुआ था।

[सं० एल-12012/338/97-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th October, 2013

S.O. 2353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 206/98)

of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 11/10/2013.

[No. L-12012/338/97-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/IC/R/206/98

PRESIDING OFFICER: SHRIR.B. PATLE

General Secretary,
Daily wages Bank employees Association,
9, Sanwer Road, UjjainWorkman/Union

Versus

Managing Director,
State Bank of Indore,
Head Office, 5, Sanwer Road,
UjjainManagement

AWARD

Passed on this 6th day of September 2013

1. As per letter dated 1-9-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act. 1947 as per Notification No. L-12012/338/97-IR(B-I). The dispute under reference relates to:

"Whether the action of Managing Director, State Bank of Indore in not regularizing Shri Harikishan Hariram Dhobi is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference notices were issued to the parties. On behalf of Ist party statement of claim is submitted by Secretary, Daily Wage Bank Employees Union. The case of Ist party workman is that he was working on vacant post as peon in SBI Branch Lateri, Distt. Vidisha, the then Branch Manager R.N. Parse engaged him on daily wages. From 8 to 10 AM, he was cleaning the branch office of the Bank, from 10.30 till evening he was required to do many work in the bank, He rendered services honestly. That he was required to work six days in a week. For holiday on Sunday his wages were deducted, he was paid weekly wages. As such he was working with the IInd party for 8 hours from 1-10-82. He was paid bonus after filing conciliation proceeding before ALC, Bhopal. During conciliation proceeding, it was assured that he would not be discontinued from service. That he had completed 240 days continuous service during each of the year. On such contentions Ist party prays for regularization of his services

and consequential benefits. During pendency, workman died, his LR Smt. Ajudibai, widow is substituted on record.

3. IInd party filed Written Statement at Page 9/1 to 9/6. Preliminary objection is raised that claim is not signed or verified by the workman as such not tenable. Union is not competent to raise the dispute. No documents is produced by the Union authorizing it or prosecuting the reference on behalf of workman. The reference filed against Managing Director is not tenable. The reference is bad for non-joinder and mis-joinder of parties. That the Union was not party before ALC in conciliation proceeding therefore it cannot prosecute the claim of Ist party workman.

4. IInd party denies that workman was required to work from 8 to 10 AM and at 10.30 till evening continuously from 1-10-82. It is denied that workman was performing his duties satisfactorily with devotion. IInd party submits that as per need, Ist party workman was engaged on daily wages. The wages were paid as agreed. Workman was not working for 8 hours claimed by him. The regular appointments were done following rules for recruitment. The appointment are made after following selection process. Ist party was not appointed after following selection process., There was not vacant post. Workman was not continuously working as claimed by him. He is not entitled for regularisation as prayed by him. On such grounds, IInd party prays for rejection of claim of workman.

5. Ist party workman filed rejoinder at Page 13/1 to 13/3. The contentions in Statement of claim filed earlier are repeated. It is submitted that during pendency Ist party workman suffered from paralysis on 21.9.02. It is submitted that IInd party has not paid bonus, gratuity as per the law despite of completing 240 days service.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------------------------|
| (i) Whether the action of Managing Director, State Bank of Indore is not regularizing Shri Harikishan Hariram Dhobi is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

7. Though objection is taken by Ist party Union on behalf of workman not to permit appearance to Advocate on behalf of IInd party, IInd party has raised objections that Secretary of Union is not competent to raise dispute on behalf of workman, at the time of hearing argument, both the parties did not press their respective objections.

8. To be precise, workman is claiming regularization of service contending that he was continuously in service of the Bank from 1-10-82, he was required to work from 8 AM to 11 AM. The contentions of workman are denied by management of IInd party. Contention of IInd party that workman was engaged on daily wages as per exigency of work and wages as granted by him were paid to him. Workman has died during pendency therefore question of regularization of his services has become defunct. The deceased person cannot be regularised in services. Besides above evidence on record needs to be considered. In his affidavit, workman has stated that he was working as peon in Lateri branch of the Bank of Indore from 1982. He was paid wages. Wages were increased to Rs. 15,20,30,35,45,60 Every year he completed more than 240 days service in the Bank. He suffered from paralysis from 21.9.02. In his cross-examination, he says that after his suffering from paralysis, he was discontinued from work, he was paid wages for the days he had worked. That he was working on daily wages.

9. The witness of the management Naresh Kumar Katakwar in his affidavit of evidence has stated that his evidence is based on record. He totally denies claim of Ist party workman that he was working on vacant post of peon/farash from 1982. According to said witness of management, workman was doing work of cleaning, bring drinking water for two hours in morning. Wages were paid as agreed. That Ist party workman is not eligible for appointment as peon in the Bank. Management's witness in his cross-examination says that from 1982 to 2002, he was not working in the Bank. The bonus was paid to workman but he was unable to tell the specific period. Separate application is filed by management of IInd party for passing no dispute award in view of death of workman in June 2008. Such application cannot be entertained. The reference needs to be decided considering the evidence on record.

10. The pleading in evidence of workman does not show that he was appointed following selection rules. Mere completion for 240 days continuous service during each of the year cannot entitle workman for regularization in service.

11. Learned counsel for IInd party Mr. Shrotri relies on ratio held in

"Case of Mahboob Deepak *Versus* Nagar panchayat, Gajraula and another reported in Case No. 2008 (1) Supreme Court Cases 575. Their Lordship of the apex court dealing with the termination of service of casual labour/Daily wager/Temporary employee completing 240 days of continuous service in a year. Services terminated on grounds of misconduct for financial irregularities without complying with Section 6-N of U.P. Industrial Disputes Act, 1947. Their Lordship held Appellant's claim for regularization, held non-

sustainable But having regard to the fact that he had completed 240 days of work and required compliance with the provisions of Section 6-N of UP Industrial Disputes Act, the workmen should be granted adequate monetary compensation. So appellant entitled to compensation, notice and notice pay. Interest of justice will be subserved if payment of a sum of Rs. 50,000 by way of damages is made to the appellant."

In present case, services of Ist party workman were not terminated. The terms of reference are whether the Bank not regularizing Shri Harikishan Hariram Dhobi is legal? Therefore the ratio held in above case that on completion of 240 days continuous service, compensation was allowed cannot be applied to the present case.

12. Workman was not appointed following recruitment process therefore he would not be entitled for regularization in the service. For above reasons, I record my finding in Point No. 1 in Affirmative. Point No. 2 is rejected.

13. In the result, award is passed as under:—

(1) Action of Managing Director, State Bank of Indore in not regularizing Shri Harikishan Hariram Dhobi is justified.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2013

का०आ० 2354.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एस ई सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 110/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/10/2013 को प्राप्त हुआ था।

[सं० एल-22012/80/2008-आई आर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 14th October, 2013

S.O. 2354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 110/08) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Johilla Area of SECL, and their workmen, received by the Central Government on 14/10/2013.

[No. L-22012/80/2008-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/110/08****PRESIDING OFFICER: SHRI R. B. PATLE**

The President,
Koyla Mazdoor Sabha (HMS),
Branch Johilla,
PO Nowrozabad,
Distt. Umaria, MP

....Workman/Union

Versus

Chief General Manager,
Johilla Area of SECL,
PO. Nowrozabad,
Distt. Umaria, MP

....Management

AWARD

Passed on this 27th day of September, 2013

1. As per letter dated 25-11-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/80/2008-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of M/S. SECL in not promoting Shri Murat Das from S.D.L. Operator Cat-V to Excavation Gr. "C" is legal and justified? To what relief is the workman concerned entitled?"

2. After receiving reference, notice were issued to the parties. Ist party Union submitted statement of claim at Page 2 alongwith documents at Page 2/2 to 2/4. The case of Union is that promotion were given as per order of Headquarter of the IInd party. On 10-10-02, Premlal Ticket No. 612, Shri Attikurehman. T, No. 504, Uttam Singh T. No. 588 and Biharilal T.No. 459 were promoted from Cat-V to Grade-C-8. That workman Murat Das was not served with any chargesheet for negligence in duties. Out of malafide, he was denied promotion. Though the Union had approached management for his promotion, promotion was not given to Murat Das therefore the matter was taken to conciliation and later has been referred.

3. IInd party filed Written Statement. It is submitted that Murat Das was granted promotion time to time. No dispute exist for adjudication, Murat Das T. No. 593 was working in Pinoura Sub Area of Vindya Colliery as SDL operator. Any irregularity was not committed in the matter of his promotion. Murat Das was promoted from Category V to VI, VI to Excavation Gr-C on 1-8-2001. It is denied that on 10-10-02, promotion to Murat Das was illegally denied while promotion other employees. It is denied that Murat Das was denied promotion out of malafide. That the

performance report were called. The performance report of Murat Das was not satisfactory as compared to other employees. That Mr. Premlal and Shri Attikurehman were senior to Murat Das. Therefore there could not be grievance about their promotions. On such contentions, IInd party prayed for rejection of the claim under reference.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---------------------------------------|
| (i) Whether the action of management of M/S. SECL in not promoting Shri Murat Das from S.D.L. Operator Cat-V to Excavation Gr. "C" is legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

5. Though Union submitted statement of claim contending that while other employee were promoted on 10-10-02, Murat Das was illegally denied promotion. The Union has not examined any witness to support above contentions. The claim of Union is denied by the management filing detailed Written Statement. Affidavit of evidence is filed. Management's witness Shri R.S. Rao consistent with the Written Statement filed by the management. That Murat Das was promoted to the post of SDL operator Cat-V on 1-8-01. That Shri Premlal and Shri Attikurehman were promoted on 10-10-02 were seniors to Murat Das. That work of Murat Das was not found satisfactory therefore he was not promoted alongwith those employees. The evidence of management's witness remained unchallenged. Union did not participate in the reference proceeding and failed to adduce evidence. He did not cross-examined witness of management. I do not find reason to disbelieve the unchallenged evidence of management's witness. Therefore I record my finding in Point No. 1 in Affirmative.

6. In the result, award is passed as under:—

(1) Action of the management of M/S. SECL in not promoting Shri Murat Das from S.D.L. Operator Cat-V to Excavation Gr. "C" is justified.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2013

कांआ 2355.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस ई सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 69/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/10/2013 को प्राप्त हुआ था।

[सं० एल-22012/471/1994-आई आर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 14th October, 2013

S.O. 2355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/95) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Chirimiri Area of SECL, and their workmen, received by the Central Government on 14/10/2013.

[No. L-22012/471/1994-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/69/95

PRESIDING OFFICER: SHRIR.B. PATLE

President, M.P.K.S.S.,
Chirimiri Area,
NCPH Branch,
Post Handibadi,
Distt. Surguja (MP)

....Workman/Union

Versus

General Manager,
Chirimiri Area, SECL,
Post West Chirimiri Colliery,
Distt. Surguja (MP)

....Management

AWARD

Passed on this 24th day of September 2013

1. As per letter dated 2-5-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012(471)/94-IR(C-II). The dispute under reference relates to:

"Whether the action of the General Manager, Chirimiri Area of SECL in superceding Shri Biplab Dasgupta Accounts Clerk Grade-II by promoting persons junior to him as Accounts Clerk Grade-I is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party Union filed statement of claim at page 2/1 to 2/6. The case of Ist party union is that workman Biplab Dasgupta was employed in IInd party. He was promoted as clerk Grade-II on 1-3-84. During the period 1-11-84 to 8-6-89, he was deployed in Area headquarters under control of Addl. Chief Finance Manager in Accounts Deptt. He was entrusted with the work of consolidation of Colliery Cost Sheets, preparation of Are Cost sheet and various statements pertaining to cost and budget section of the Accounts/Finance Deptt. That he was efficiently doing his job in Budget section. In 1987 management visualized programme for imparting accounts education for deserving candidates in the Area. The workman was chosen for CIL Accounts Exam Course.

3. That the work of Shri Biplab Dasgupta was appreciated for his sincerity, honesty and integrity. In 1989, when impugned promotions for the post of Accounts Clerk Grade-I were made, Shri Biplab Dasgupta was deserving promotion to Clerk Grade-II considering his experience and seniority. However he was transferred to NCPH Colliery. Instead of workman, Smt. Tuna Shrivastava was promoted as Accounts clerk Grade-I *vide* order dated 12-12-89, she was junior to the workman. She had no requisite experience in Accounts work, she was doing only typing job.

4. It is further submitted that as per order dated 25-7-90, one Manendra Chakravorty was promoted as Accounts clerk Grade-I. He is junior to workman Biplab Dasgupta. That the basis for promotion is seniority-cum-merit was not followed. The cadre scheme was introduced from 22-7-85. Different cadres were considered like General Clerical Cadre, store Personnel Cadre, Loading, dispatch and Sales Cadre, Cash Personnel Cadre, Accounts Cadre & Secretarial cadre. Separate promotion scheme was implemented as claimed by Promotion Committee. Separate promotion scheme was implemented as claimed by Promotion Committee. That Smt. Tuna Shrivastava was dealing to Secretarial Cadre, she could not have been promoted. The cadre scheme for Accounts Discipline prescribed/provided that all Graduates from any stream may opt for horizontal movement to the Accounts Cadre. Smt. Tuna Shrivastava have opted for Accounts cadre, she was working as typist in Secretariat Cadre. That workman was entitled to be considered for promotion on 1-11-87 overlooking his claim arbitrarily, promotion was denied to him. On such grounds, Union prays that workman Biplab Dasgupta be considered for promotion to Accounts Clerk Grade-I from 1-11-1987, his seniority be revised as on 14-12-89.

5. IInd party filed Written Statement at Page 9/1 to 9/8. Claim of Union is denied. It is submitted that workman was initially appointed from 13-3-82, he was promoted to the post of Clerk Grade-II from 1-3-84. Workman joined at Area Headquarter Chirimiri in November 1984. Then he was transferred to NCPH Colliery. He worked in said colliery

till 8-6-99. During said period, he submitted application/option for change in office cadre to the Accounts Cadre. The option was put up before the Competent Authority who disposed off his application that he may work in Finance Section but he remained in General Cadre and his case for promotion to higher post will be considered alongwith other general clerical cadre employees as per the existing scheme. The said decision was communicated to him on 19-12-87. Thereafter he was transferred to NCPH colliery in June 1989. The workman again submitted representation in 1990. His case was considered and he was re-designated to the post of Accounts Clerk Grade-II *vide* office order dated 9-3-91.

6. That workman again submitted representation for restoration of his seniority in accounts cadre from November 1984. His request was not considered. The decision was communicated to the workman on 14-3-91. The claim of workman for change of cadre was dismissed on 4-3-93. His case was again examined by Competent Authority. The claim for notional seniority was not accepted. Decision was communicated on 3-3-94. The workman worked in Accounts Section at G.M. Office from 1-11-1984. Thereafter he was transferred to NCPH colliery. Smt. Tuna Shrivastava was promoted as Clerk Grade II in General Cadre from 23-10-82. She was promoted as Accounts clerk Grade-I on 14-12-89. She was working in Accounts deptt. from 23-10-82, she was given notional seniority in Accounts Cadre from 23-10-82. Thus her re-designation in Accounts Cadre has given retrospective effect. Shri M. Chakraborty was promoted as Clerk Grade-III on 28-8-83, as clerk Grade II on 1-3-84. He was re-designated in Accounts Cadre Clerk Grade-II from 30-8-86. He was promoted as Accounts Clerk Grade-I from 25-7-90.

7. In para-11, details of appointment, date of birth and other particulars of all 3 persons are given. IInd party submits that re-designation in Accounts Cadre is done on option basis, orders were issued on the basis of approval considering the seniority. Other allegations of Union are denied.

8. The application was filed by management for implementing Smt. Tuna Shrivastava & M. Chakraborty as necessary party.

9. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|-------------|
| (i) Whether the action of the General Manager, Chirimiri Area of SECL in superceding Shri Biplab Dasgupta Accounts clerk Grade-II by promoting persons junior to him as Accounts clerk Grade-I is legal? | In Negative |
|--|-------------|

- | | |
|---|---------------------|
| (ii) If not, what relief the workman is entitled to?" | As per final order. |
|---|---------------------|

REASONS

10. The Union has submitted statement of claim contending that Shri Biplab Dasgupta was illegally denied promotions overlooking his seniority by IInd party. The details of the pleadings are narrated above. The Union has not adduced evidence to substantiate his claim under reference. Evidence of Ist party was closed on 20-9-2010.

11. Management filed evidence of witness Shri Vijay Kumar Pandey. His evidence remained unchallenged. The Union has not participated in the reference proceeding, no evidence is adduced in support of the grievance of workman Biplab Dasgupta. Normally the claim of Union could not be accepted. However pleadings of the IInd party in the Written Statement are apparently disclosing that the workman was promoted to Clerk Grade-II to General Cadre from 1-3-84 to 7-6-89. Thereafter he was transferred to NCDC Colliery. That he was promoted as Accounts Clerk Grade I from 12-12-95. Para 5, 6 of the Written Statement filed by IInd party shows that the representations of the workman for seniority in Accounts Cadre from November 1984 was not accepted. His claim for change of cadre though examined by Competent Authority observed that management cannot agree for notional seniority. In para-3 Smt. Tuna Shrivastava is promoted as Clerk Grade-II in General cadre from 23-10-82, she was promoted as clerk Grade I from 14-12-89. She was working in Accounts deptt. from 1982. In Para-10 of the Written Statement, it is stated that Mr. M. Chakraborty was promoted as Clerk Grade-III. On 28-8-83, he was promoted as Clerk Grade-II from 3-3-84, he was re-designated in Accounts cadre from 30-10-86. Those details are also shown in Para-11 of the Written Statement. That Mr. M. Chakraborty was promoted as Accounts Clerk Grade-I on 25-6-90 whereas the workman was promoted as Accounts Clerk Grade-I on 12-12-95. From the pleading discussed above in Written Statement filed by management and the documents produced alongwith Written Statement, it is clear that seniority of workman was overlooked without any reasons. Though the workman was working in Accounts Section from 84 to 98, his request for change of cadre was not considered. The Cadre scheme was introduced in 1985. The pleadings are silent that Mr. M. Chakraborty was working at Accounts Deptt. he was promoted on 25-7-90 whereas Shri Biplab Dasgupta was working in Accounts branch was promoted on 12-12-95. As per the pleadings in Written Statement filed by IInd party, it is clear that workman was denied promotion overlooking his seniority, he should have been promoted to the post of Accounts clerk Grade-I when Mr. M. Chakraborty was promoted. Therefore the action of the management is not justified. For above reasons, I record my finding in Point No. 1 in Negative.

12. Point No. 2—

In view of my finding in Point No. 1, question arises to what relief the workman is entitled to? As per the reasons in Point No. 1 that Mr. Chakraborty was promoted on 25-7-90, Shri Biplab Dasgupta though worked in Accounts section from 84 to 89 was denied promotion. Therefore benefits of deemed promotion to the post of Accounts Clerk Grade-I deserves to be granted to the workman Shri Biplab Dasgupta. Accordingly I record my finding in Point No. 2.

13. In the result, award is passed as under:—

(1) Action of the General Manager, Chirimiri Area of SECL in superceding Shri Biplab Dasgupta Accounts clerk Grade-II by promoting persons junior to him as Accounts clerk Grade-I is not proper.

(2) IInd party is directed to give benefit of deemed promotion to the post of Grade-I Accounts Clerk to Shri Biplab Dasgupta from 25-7-90, the date from which M. Chakraborty was promoted but without monetary benefits.

R.B. PATLE, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2013

का.आ. 2356.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुम्बई के पंचाट (संदर्भ सं. 101/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.10.2013 को प्राप्त हुआ था।

[सं. एल-12011/54/2005-आई आर (बी-II)]
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 14th October, 2013

S.O. 2356.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 101/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Mumbai as shown in the Annexure, in the industrial dispute between the management of Bank of India, and their workmen, received by the Central Government on 14/10/2013.

[No. L-12011/54/2005-IR (B-II)]
RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

PRESENT: K. B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/101 OF 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT
OF BANK OF INDIA

The Dy. General Manager
Bank of India
Mumbai South Zone
Bol Building
70-80, M.G. Road, Fort
Mumbai-400 023

AND

Their Workmen
Smt. Kashmira H. Kulkarni
Plot No. 101, Flat no. 4
Maya, Shere Punjab
Andheri (E)
Mumbai-400 093

APPEARANCES:

For the Employer : Mr. L.L. D'Souza,
Representative.
For the Workman : Mr. J.H. Sawant,
Advocate.

Mumbai, dated the 12th August, 2013

AWARD PART-II

The Government of India, Ministry of Labour & Employment by its Order No. L-12011/54/2005-IR (B-II), dated 22.08.2005 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Bank of India, Mumbai South Zone, Mumbai in imposing the compulsory retirement punishment to Smt. Kashmira Kulkarni w.e.f. 21/09/2004 is justified? If not, what relief the workman, Smt. Kashmira Kulkarni is entitled to?"

2. By the Award Part-I dtd. 28/07/2011 this Tribunal held that the inquiry conducted against the second party workman was fair and proper and the findings of the Inquiry Officer were held not perverse.

3. Now following are the remaining issues framed by my Ld. Predecessor for my determination. I record my findings thereon for the reasons to follow:

Sr. Issues No.	Findings
3. Is the punishment just and proper?	Yes.
4. What relief the workman is entitled to?	No relief
5. What order?	As per order below.

REASONS

Issue No. 3 & 4:—

4. The following charges were levelled against the second party workman and she was held guilty for the said misconduct. They are:

- (1) The workman managed to close here S.B. A/c. no. 11155 with Bank's Chakala Branch, Andheri on 3/3/1999 without surrendering the cheque books and utilized cheque therefrom towards re-payment of loan of Rs. 90,000, she has availed subsequently from Pradip Kantilal Bhuta and another so much so when the cheque was presented in clearing by Bank Baroda, Vile Parle Branch, it had to be returned unpaid for the reasons 'account closed'. The workman not only acted dishonestly but also tarnished the image of the bank.
- (2) While working with Opera House Branch she used to issue cheques without keeping funds in her account and also neglected in managing the payment before the date the cheque reaches for encashment and cheque has to be returned unpaid for reasons 'fund insufficient'. Some six such instances are given in the written statement. It amounts to offence under Sec. 138 of Negotiable Instruments Act.
- (3) The workman was maintaining O.D. A/c. no. 5822 against NSCs at Bank's Churchgate Branch. The outstanding debit balance in this account on 11/2/2004 was Rs. 80,615 against drawing limit of 80,000 Despite this the workman drew a cheque of Rs. 10,000 in favour of F. Oswal payable on 11/02/2004. The said cheque had to be returned unpaid for the reason of 'exceeding arrangement'. It also amount to dishonestly, lack of integrity and offence under Sec. 138 of N.I. Act.

5. In this respect the Ld. Adv. for the second party submitted that the charges proved against the second party were not of serious nature though cheques issued by second party were bounced and she has availed overdraft facility more than the sanctioned amount. According to him these charges are not so severe to retire the second party workman compulsorily from the services. On the other hand he submitted that some other lesser punishment such as withholding one or two increments would have sufficed the purpose.

6. As against this the Ld. Adv. for the first party submitted that it is not the only misconduct of the workman to take any lenient view. He pointed out that they have filed list of documents at page 57 the workman was shown to have been punished for the similar misconduct of

dishonour of her cheque for insufficient balance in her account. On 24/04/2003 she had accepted the charges unconditionally and assured the Bank that such act will not be repeated in future. Considering her apology and unconditional acceptance of charges, minor penalty of "censure" was imposed on the second party. The charge levelled in the inquiry proceeding was within a year from the date of her written submission dated 24/04/2003. In the circumstances the Ld. Adv. for the first party submitted that the disciplinary authority would have fully justified even in dismissing the second party workman from the service. However disciplinary authority has taken lenient view and awarded much lesser punishment of compulsory retirement with superannuation benefits.

7. On the point the Ld. Adv. for first party pointed out that it is not the only misconduct of like nature on the part of the workman. The workman had committed the same type of misconduct few months back and had also given undertaking not to repeat the misconduct of like nature. Inspite of that she has committed the misconduct of like nature. She had issued a cheque of the account which was already closed and the same came to be bounced. She had also issued a cheque of more amount than the existing balance in her account and on that ground the cheque of third party came to be bounced. Bouncing of cheques not only indicate discredit of the account holder but it amount to an offence punishable under Sec. 138 of Negotiable Instruments Act. She has also availed excess O/D. The workman is not a layman but is an employee of a nationalised bank and such acts not only show discredit of the account holder but also cause dis-reputation to the employer Bank. In the light of earlier misconducts these misconducts can be termed as serious misconducts and even termination of services would have been justified. However the disciplinary authority has taken lenient view and imposed punishment of compulsory retirement with superannuation benefits.

8. In the circumstances I hold that the punishment is just and proper and it is proportionate to the proved misconduct. Therefore it needs no interference. Accordingly I decide this issue no. 3 in the affirmative. Consequently I hold that the workman is not entitled to any relief. Accordingly I decide this issue no. 4 in the negative and proceed to pass the following order:

ORDER

The reference stands rejected with no order as to cost.

K.B. KATAKE, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2013

का०आ० 2357.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 101/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/10/2013 को प्राप्त हुआ था।

[सं एल-12012/130/2003-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2013

S.O. 2357.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 101/07) of the Cent. Govt. Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 14/10/2013.

[No. L-12012/130/2003-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/101/07

PRESIDING OFFICER: SHRIR.B. PATLE

General Secretary
Daily Wages Bank Employees Association,
9, Sanwer Road, UjjainWorkman/Union

Versus

General Manager (Operations),
State Bank of Indore,
(merged as State Bank of India),
Head Office 5, Yeshwant Niwas Road,
Indore

The Managing Director,
State Bank of Indore
(merged as State Bank of India),
Head Officer 5, Yeshwant Niwas Road,
IndoreManagements

AWARD

Passed on this 26th day of September, 2013

1. As per letter dated 5-10-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/130/2003-IR (B-I). The dispute under reference relates to:

"Whether the action of the management of Managing Director, State Bank of Indore in not granting appointment on compassionate ground to Smt. Pawankunmar W/o Late Shri Prakashchand Solanki

after his death i.e. on 4-1-02 and not paying his consequential benefits is justified? If not, to what relief she is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party widow of deceased workman filed statement of claim at Page 3/1 to 3/4. The case of Ist party workman is that her husband Prakash Solanki suffered heart attack on 4-1-2002 while on duty in the bank. He had died of heart attack leaving his widow, 4 daughter and a son details given in Para 3. That her husband was working in State Bank of Indore Branch Sailana from 6-7-96. He was performing duties of peon. He suffered heart attack and died while on duty. That the Branch Manager had called her and forwarded her application for appointment on compassionate ground. She was told by the Branch Manager that the record shows her husband was paid wages in bogus names to Shri Prakash Chandra. She had received bonus in 2005. She is claiming for appointment on compassionate ground.

3. IInd party filed Written Statement. Case of IInd party is that State Bank of Indore is established under Banking Regulation Act. The Peon, Farrash, Messengers, security guards are appointed following the rules. The deceased husband of the Ist party was not appointed following recruitment rules. He was engaged on daily wages as per exigency of work during the period 6-7-96 to 4-1-2002. He was working one hour in morning and one hour in the evening. He was doing cleaning and dusting work in the Bank. He was not regular employee of the Bank. His name was sponsored through Employment Exchange. The deceased was paid wages Rs. 35 per day. Part time employees or casual employees are not entitled for appointment on compassionate ground as per scheme dated 12-12-98. That bonus is paid if employee works for 90 days. Merely on payment of bonus, the workman cannot be said regular employee. On such ground, IInd party prays for rejection of claim.

4. State Bank of Indore is merged in State Bank of India as per Notification dated 28-7-2010.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|----------------|
| (i) Whether the action of the management of Managing Director, State Bank of Indore is not granting appointment on compassionate ground to Smt. Pawankunmar W/o Late Shri Prakashchand Solanki after his death i.e. on 4-1-02 and not paying his consequential benefits is legal? | In Affirmative |
|---|----------------|

- (ii) If not, what relief the workman is entitled to? Relief prayed by workman is rejected.

REASONS

6. To be precise, Ist party claiming to be widown of Shri Prakash Solanki who died during course of duty suffering from heart attack prays for appointment on compassionate ground does not cover part time casual employees. Workman has produced documents Exhibit W 1. Said document shows that bonus Rs. 1825 was paid in 2005 to Ist party workman.

7. Affidavit of evidence is filed by Ist party Pawankunwar stating that her husband died of heart attack on 4-1-2002 leaving behind 4 daughters and one son. Her husband was working in the Bank from 6-7-96 to 4-1-02. She was told that wages were paid to her husband in name of Shri Prakash Chand. That her husband had completed 240 days service. In her cross-examination, she has stated that her husband was paid weekly wages. That she has prayed for appointment on compassionate ground.

8. Management filed affidavit of evidence of witness Shri Liladhar Gharsar. The witness of the management status that scheme for compassionate appointment applied to permanent employee of the Bank. That Shri Prakash Solanki was engaged as temporary casual workman. He was not holding permanent post. The scheme is not applicable. In his cross-examination, management's witness claims ignorance whether wages were paid in name of Prakash Chandra and Prakash Singh. The witness of management was unable to tell why information Prakash Singh was not stated in his affidavit of evidence. He admits Letter Exhibit W-3 that the husband of deceased died on 4-1-02 of heart attack. The document Exhibit M-1 is the copy of scheme of appointment on compassionate ground. The definition of employee does not include temporary or casual employee. The evidence on record shows husband of Ist party widow was not permanent/regular employee of the Bank therefore the scheme for appointment on compassionate ground does not apply in the matter. Ist party is therefore not entitled for appointment on compassionate ground. For above reasons, I record my finding in Point No. 1 in Affirmative.

9. In the result, award is passed as under:—

(1) Action of the management of Managing Director, State Bank of Indore in not granting appointment on compassionate ground to Smt. Pawankunmar W/o Late Shri Prakashchand Solanki after his death i.e. on 4-1-02 and not paying his consequential benefits is proper.

(2) Relief prayed by Ist party is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2013

का०आ० 2358.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 4/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/10/2013 प्राप्त हुआ था।

[सं. एल-12012/189/2005-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2013

S.O. 2358.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen received by the Central Government on 14/10/2013.

[No. L-12012/189/2005-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/2007

Presiding Officer : SHRI R. B. PATLE

General Secretary,
Daily Wages Bank Employees Association,
9, Sanwer Road, Ujjain (MP)Workman/Union

Versus

Deputy General Manager,
State Bank of India, Zonal Office,
Hoshangabad Road,
Bhopal (MP)Management

AWARD

Passed on this 10th day of September, 2013

1. As per letter dated 4-12-2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-12012/189/2005-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Dy. General Manager, State Bank of India in terminating the services of Shri Chhotelal Kushwah w.e.f. 16-10-99 and not regularizing his services even after completing more than 240 days in a calendar year is

justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/6. Case of Ist party workman is that he was working as waterman-cum-messenger at Sultania Road branch of SBI, Bhopal from 3-5-77 to 25-6-77. Considering his honest service, he was again allowed to work from 1-6-81 to 26-8-81 as Messenger at TT Nagar Branch Bhopal for 87 days. He further submits that he was working in Mahavir Nagar Branch Bhopal during 21-2-83 to 13-10-83.

3. Bipartite settlement was executed between management and Union on 17-11-87. It was settled that the casual employees working for 30 days during 1-7-75 to 31-7-88 would be eligible for appointment. That he was called for interview on 22-9-89. Interview was conducted on said day. He had received knowledge that he was selected and he would be appointed on post of messenger in due course of time when his number will come. It is further submitted that after his selection as per interview on 22-9-89, he was working in SBI from 13-12-92 for more than 300 days in Vidyanchal branch. On 22-5-97, he was informed that he was transferred from Vidyanchal branch to Chola Road branch and thereafter he started working in Chole Road Branch till termination of his service on 16-10-99. That is services were terminated giving forcible notice retrenchment. He was not paid gratuity, notice pay. Ist party workman submits that he had completed more than 240 days continuous service. His services were terminated without paying retrenchment compensation. Other persons was employed in his place therefore termination of his service is illegal. On such grounds, workman prays for reinstatement with consequential benefits.

4. Management filed Written Statement at Page 7/1 to 7/9. IInd party raised objection that Shri Ram Nagwanchi was a dismissed employee of the State Bank of Indore. His services are terminated, he is not competent to represent the workman. The reference is not tenable. IInd party further submits that during 1977 to 1999, Ist party workman was working for some days. He was working as casual employee, wages for working days were paid to him. His discontinuation does not amount to retrenchment. His discontinuation from service is covered under Section 2(00)(bb) of I.D. Act. That the workman had worked for 46 days in 1977 at Sultania Branch, 80 days in Mahavir Nagar Branch, Vidyanchal and Chola Road. As per Bipartite settlement, the workman was called for interview in 1989. He was not again called for interview in 1997. The list prepared as per interview in 1989 was valid till 1997. The workman was not available therefore his services were terminated from 16-10-99, retrenchment compensation was paid. Amount of wages, gratuity were also paid to the workman. Workman is not entitled to relief prayed by him.

5. Workman filed rejoinder at page 9/1 to 9/3 reiterating his contentions in Statement of Claim. That in 1977, he worked for 46 days, 87 days in 1981, 80 days in 1983 and 80 days in 1984-total 293 days. He was interviewed on 22-9-89. Around 4 years he was called for work at Vidyanchal branch. He continued to work in said branch from 30-12-92 to 22-5-97. Thereafter he was transferred. He was working in Chhola branch till 16-10-1999. That he was working at Vidyanchal branch for 1601 days and at Chola Road branch for 877 days. Thus he worked for total 2771 days. That his services are illegally terminated. Other persons are employed in his place. On such grounds, workman reiterates for his reinstatement with consequential benefits.

6. Considering pleading on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|--------------------|
| (i) Whether the action of the management of Dy. General Manager, State Bank of India in terminating the services of Shri Chhotelal Kushwah <i>w.e.f.</i> 16-10-99 and not regularizing his services even after completing more than 240 days in a calendar year is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to? | As per final order |

REASONS

7. In support of his claim, workman filed affidavit of his evidence. In his affidavit of evidence, he was stated that he was working in Sultania Branch Bhopal, from 3-5-77 to 26-6-77, in TT Nagar from 1-6-81 to 26-8-81-total 87 days. In Mahavir branch he worked from 21-2-83 to 13-10-83. He was interviewed on 10-2-86. He was again interviewed on 22-9-89 then he was working in Vidyanchal Branch Bhopal from 30-12-92 to 25-5-95. He was transferred to Chola Road Branch and worked till 16-10-91. That his services were terminated without notice, list of retrenched employee was not displayed. Other persons were engaged after his termination.

8. In his cross-examination, workman says that he was member of Union, he has paid Rs. 1000/- to Shri Nagwanchi. He had not received appointment letter. No interview was held before his appointment. He was paid wages for the working days. From 93 to 97, he was working in Vidyanchal branch. No interview was held in that branch. From 97 to 99, he was working at Chola branch. The evidence of workman is not shattered that he was working for more than 240 days. His evidence that he was interviewed on 22-9-89 is not challenged in his cross-examination. He was working in Vidyanchal branch and Chola branch is not shattered in his cross-examination.

9. The witness of management filed affidavit of his evidence supporting management's contentions that workman was engaged as per exigency of work, he was not working as regular employee during 1977 to 1999. In his cross-examination, management's witness admits that workman worked from 23-5-97 to 16-10-97 in Chola branch. He did not enquire from Branch Manager of Vindyanchal branch. He further states that the record shows that workman had also worked in Vindyanchal branch. The documents Exhibit W-1 to W-7 are admitted from his evidence in cross-examination. Document Exhibit W-1 shows workman was working for 87 days in 1991. Exhibit W-1(A) shows workman was working as temporary messenger in Mahavir Nagar branch from 21-2-83 to 13-10-83. Exhibit W-1(B) shows that workman was working for 46 days as waterman in Sultania branch. Exhibit W-2 shows the interview call was issued to the workman. Exhibit W-3 shows that as per Bipartite settlement, casual employees working on 30 days to 240 days during 1-7-75 to 31-7-88 were eligible for appointment as regular employee. Exhibit W-4 is I-Card of workman of Chola Road branch. In W-5, Branch Manager of Chola Road branch had written to the Asstt. General Manager that Ist party workman was allowed to work at Chola branch. He was not responsible for it. The enquiry may be taken who was responsible for the same and action may be taken. Document Exhibit W-6 shows that workman was not called for interview as he was also interviewed in 1985. Document Exhibit W-7 A to W-7 T are zerox copies of cheques, different payments made to workman. The evidence of workman and management is properly appreciated. The evidence of workman shows that he was working from 1977 to 1999 for 22 years. Management has admitted Exhibit W-1 produced by workman. The retrenchment notice was received on 16-10-99, the services of workman terminated w.e.f. 16-10-99 as approved vacancies are not available. The evidence of workman remained unchallenged after termination of his services, other persons were engaged. The reasons of termination of workman cannot be said proper. The termination of services of workman who was working for almost 22 years, he was interviewed in 1989 as per the Bipartite settlement even after interview he was allowed to work from 1992 to 1997. The management has not produced list of the selected persons as per interview dated 22-9-89. No evidence is adduced by the management to establish that the said list was valid till 1997 whether all the persons in the list were exhausted. For above reasons, termination of services of workman amount to illegal and action of the management is not justified. As such termination of service of workman is illegal.

10. Learned counsel for IInd party Mr. Mukesh Srivastava submitted that the evidence of workman is not sufficient to establish working of 240 days continuous service. Workman is bound to establish in support of his argument. Learned counsel relies in ratio held in

“Case of Surendranagar Distt. Panchayat versus Gangaben Laljibhai and others Their Lordship of the

Apex Court held that mere affidavit of self serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year.”

In present case, the management's witness has also admitted in his cross-examination that from 1977 to 1999, the workman was working in Chola branch, workman was also working in Vindyanchal branch therefore the ratio in the above cited case cannot be applied to the case at hand. Therefore it is clear that termination of services of workman instead of regularization of service as per selection on basis of written test on 22-9-85 is illegal. For above reasons, I record my finding in Point No. 1 in Negative.

11. Point No. 2—In view of my finding in Point No. 1, question arises to what relief the workman is entitled. Considering the length of service rendered by workman from 1977 to 1999, after his interview held on 22-9-89, he was allowed to work in the branch from 1992 to 1997 his services were not regularized. The workman deserves reinstatement in service. The evidence adduced by parties is not cogent about gainful employment of workman therefore reinstatement with 50% back wages would be appropriate. Accordingly I record my finding on Point No. 2.

12. In the result, award is passed as under:—

(1) The action of the management of Dy. General Manager, State Bank of India in terminating the services of Shri Chhotelal Kushwah w.e.f. 16-10-99 and not regularizing his services even after completing more than 240 days in a calendar year is illegal.

(2) IInd party is directed to reinstate the workman Shri Chhotelal Kushwah with 50% back wages.

R.B. PATLE, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2013

कांआ० 2359.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक आफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 46/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/10/2013 प्राप्त हुआ था।

[सं० एल-12012/158/97-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2013

S.O. 2359.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/98) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their

workmen, received by the Central Government on 14/10/2013.

[No. L-12012/158/97-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/46/98

PRESIDING OFFICER: SHRIR.B. PATLE

General Secretary,
All India State Bank of India Employees Congress,
9, Sanwer Road, Hardeo Niwas,
Ujjain

....Workman/Union

Versus

Managing Director,
State Bank of Indore,
Head Office, 5, Yeshwant Niwas Road,
Indore

....Management

AWARD

Passed on this 11th day of September, 2013

1. As per letter dated 23.2.98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I. D. Act, 1947 as per Notification No. L-12012/158/97-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore in terminating the services of Shri Firoz Khan even after his working in the Bank from 2-5-94 to 1-7-96 continuously is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Statement of claim is filed by the Secretary of Dainik Vetan Bhogi Bank Karmchari Sangthan. It does not appear signature of workman. As per the statement of claim, the case of Ist party is that Shri Panda, Officer working in the Bank had engaged workman on daily wages for cleaning work. During his working from 8 to 10 AM, and again from 10.30 AM till 6 PM, he was working from 2-5-94. In statement of claim, names of 15 persons are shown as working on daily wages. The names of permanent employees working in the Bank. The daily wage employees were working 8 hours per day though they have been paid wages 30 Rs. per day. The wages has been increased to Rs. 50 per day. On 13-2-96, daily wage employees prayed for payment of wages at Collector rate. IInd party annoyed with it, discontinued their service of daily wage employee. That the daily wage employee completed 240 days continuous service during period 2-5-94 to 1-7-96. His services were

terminated in violation of Section 25-F. Retrenchment compensation was not paid. Other employees were engaged in their place, they were not given opportunity or re-employment under Section 25-H of I.D. Act. On such grounds, Union prays for reinstatement of workman.

3. IInd party filed Written Statement at Page 4/1 to 4/3. It is submitted that the workman Firoz Khan has not completed 240 days continuous service. He is not covered as workman. It is denied that said Feroz was interviewed or appointment letter was given to him. All other contentions of Union are denied outright. It is submitted that as the workman has not completed 240 days continuous service, there was no question of termination of his service issuing notice. The claim of Union be rejected.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------|
| (i) Whether the action of the management of State Bank of Indore in terminating the services of Shri Firoz Khan even after his working in the Bank from 2-5-94 to 1-7-96 continuously is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

5. Ist party union filed statement of claim through Secretary Shri Ram Nagwanshi. It does not bear signature of workman. IInd party denied that workman Feroz Khan has completed 240 days continuous service. Affidavit of evidence of workman is filed covering all the contentions in the statement of claim that he was continuously working from 2-5-94 on wages Rs. 30 per day. His services were terminated on 13-2-96. Last wages were paid to him Rs. 50 per day. The evidence of workman remained unchallenged. It appears that after affidavit of evidence was filed as per direction of Court, the workman had not been made available for his cross-examination. Management filed affidavit of witness Shri Deepak Kothari. The contentions of management are provided in his affidavit that workman has not completed 240 days continuous service. That the workman was engaged for cleaning work 1 hour morning and 1 hour in evening. The wages were paid as agreed. In his cross-examination, the management's witness says the working hours stated in his affidavit were as per exigency. That appointment letter was not issued to workman. There was not written contract, muster roll was not maintained. The wages were paid by cheque. He was not working in Bank during 1994 to 1996. The witness was unable to tell whether documents produced by workman P-38 to 45, P-46

to P-74 were in the Bank. Management's witness reiterates that as workman was not engaged by Bank, there was not question of his termination. The evidence of the workman remained unchallenged. The management did not take any steps to recall workman for cross-examination. I find no reason to disbelieve his unchallenged evidence. Management's witness was not working in the Bank at relevant time therefore his evidence appears on hear-say information. His evidence cannot be preferred to the evidence of the workman. Workman has produced several documents alongwith list. The workman was working from 2-5-94 to 1-7-96. Unchallenged evidence deserved to be accepted. It is established that the workman has completed 240 days continuous service in the Bank. His services are terminated without notice, without payment of retrenchment compensation. Termination of his service is in violation of Section 25-F of I.D. Act, therefore action of management is not legal. For above reasons, I record my finding in Point No. 1 in Negative.

6. Point No. 2- In view of my finding in Point No. 1, question arises to what relief the workman is entitled. The workman Feroz Khan was not appointed after following selection process. He had worked during 2-5-94 to 1-7-96 for about 3 years. There is not evidence that he was working against sanctioned post therefore his reinstatement with back wages is not proper. In my considered view, for violation of Section 25-F, reasonable compensation should be allowed. Compensation Rs. 40,000/- would be appropriate. Accordingly I record my finding in Point No. 2.

7. In the result, award is passed as under:—

(1) The action of the management of State Bank of Indore in terminating the services of Shri Firoz Khan even after his working in the Bank from 2-5-94 to 1-7-96 continuously is illegal.

(2) Management is directed to pay compensation Rs. 40,000 to workman Shri Firoz Khan.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2013

का०आ० 2360.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ई सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (संदर्भ संख्या 31/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/10/2013 को प्राप्त हुआ था।

[सं एल-22012/152/2006-आई आर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 14th October, 2013

S.O. 2360.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Central Kajora Colliery of M/s. ECL and their workmen, received by the Central Government on 14/10/2013.

[No. L-22012/152/2006-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Shri Yanata Kumar Sen, Presiding Officer

Reference No. 31 OF 2007

PARTIES :

The management of
Central Kajora Colliery of M/s. ECL, Burdwan
Versus

The Org. Secy., CRMS (BMM),
Bidhanbag, Burdwan (WB)

REPRESENTATIVES:

For the management :

Shri P.K. Goswami, Ld. Advocate

For the union (Workman) :

Shri Milan Kumar Bandopadhyaya, Ld. Representative

Industry : Coal State : West Bengal

Dated 05.06.2013

AWARD

In exercise of powers conferred by clause (d) of the Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947). Govt. of India through the Ministry of Labour *vide* its Order No. L-22012/152/2006-IR (CM-II) dated 04.05.2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the demand of the Union for regularization of Shri Pradipta Das, General Mazdoor in the post of Clerk in view of his working in clerical job for him w.e.f. 05.03.1994 is legal and justified? If so, to what relief is the workman entitled?"

Having received the Order of Letter No. L-22012/152/2007-IR(CM-II) dated 04.05.2007 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No.

31 of 2007 was registered on 03.07.2007 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

It is an admitted fact that the workman Pradipta Das joined his duty on 12.10.1991 as General Mazdoor in Category I on compassionate ground due to premature death of his father M.L. Das. It is further case that the workman Pradipta Das is a graduate degree holder with Diploma in Computer Science, and considering his ability and efficiency, the Management of Central Kajora Colliery, directed the workman in writing by office Order No. CKC/Agent/00/94/05 dated 05.03.1994 to prepare LTC/LLTC bill of the employees and since 2000 he is doing the job of a clerk as a Time Keeper.

The Learned Lawyer of the workman has referred a copy of confidential letter of Sr. P.O. Central Kajora Colliery dated 03.08.1996 written to the Dy. C.P.M. Kajora Area in which the Sr. P.O. has recommended to consider the case of the workman on the ground that some other workmen have already been regularized by the Management on the observation made by the Hon'ble High Court. The Learned Lawyer of the workman has further referred letter of Management of Central Kajora Colliery dated 24.12.2001 and has submitted that the Management (Manager) in his letter has also stated that the workman Pradipta Das is working as Grade II from 01.01.2001 and his Superior Officer found his work as satisfactory. But from perusal of the written argument dated 29.08.2012 filed on behalf of the workman I find that the workman has claimed regularisation of his service as clerk w.e.f. 26.08.1992, but from the office Order No. CKC/Agent/00/94/05 dated 05.03.1994 the workman has been directed to prepare LTC/LLTC/bill of the employee and since 2000 he is doing the job of a clerk as a Time Keeper. Further from perusal of the Letter No. CKC/P & IR/0-6/11/1470 dated 19.01.2011 issued by Sr. Manager (P) which is issued to three persons namely Subhas Kumar Bhalotia, Pradipta Das and Ram Nandan Prasad Singh, I find that the Management has directed all the competent authority to accord approval for their regularisation as clerk, Grade III with immediate effect as communicated *vide* No. K/Dy. CPM/C-6/6/1901 dated 14.01.2011 and all the three persons are directed to produce certificates, undertakings and the regularisation till the effect after withdrawal of their court case. I find from the perusal of the letter that the Management has not disclosed in the above letter whether any remuneration will be given to the workman Sudipta Das for his work which he has done on the written direction of the Management. In my

opinion Column (d) of the above mentioned letter of Sr. Manager (P) is not legally correct rather it makes clear that the Management is giving under pressure on the workman to withdraw the case without claiming any remuneration for work which he had already done. It is against the principle of "Natural Justice". In my opinion workman Sudipta Das is entitled to get 25% extra of his existing Basic Pay (without any other allowance) from the date of authorization of the Management to do work of the clerk (*vide* Order No. CKC/Agent/00/94/54 dated 05.03.1994) from 05.03.1994.

So, in my opinion the demand of the Union for regularisation of Pradipta Das, General Mazdoor in the post of clerk is legal, and moreover, the Management has also agreed to regularize his job in Grade III as per letter dated 19.01.2011. So, the Management is directed to issue necessary order for regularisation of the workman as clerk-III within a month from the receipt of the Award and till then the workman is entitled to get 25% of his existing Basic Pay (without any allowance) as remuneration from 05.03.1994.

ORDER

Let an "Award" be and the same is passed as per above. Send the copies of the "Award" to the Government of India, Ministry of Labour & Employment, New Delhi for information and needful.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 15 अक्टूबर, 2013

का०आ० 2361.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (14/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.10.2013 को प्राप्त हुआ था।

[सं० एल-12012/44/2001-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 15th October, 2013

S.O. 2361.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of Syndicate Bank, and their workman, which was received by the Central Government on 15/10/2013.

[No. L-12012/44/2001-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE**BEFORE SRI RAM PRAKASH, HJS, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, KANPUR****Industrail Dispute No. 14 of 2001**

Between—

Shri A. K. Kaushik,
C/o John Rizvi,
Mohalla Danish Mandan,
Amroha,
District J.P. Nagar.

And

The Assistant General Manager,
Syndicate Bank,
Zonal Office,
Lucknow.

AWARD

1. Central Government, Mol, New Delhi, *vide* notification no. L-12012/44/2001 B-II dated 20.07.2001, has referred the following dispute for adjudication to this tribunal.

2. Whether the actions of the Syndicate Bank management in dismissing Sri A.K. Kaushik from service *vide* order dated 30.09.99 is just fair and legal? If not, what relief he is entitled to?

3. It is not in dispute that the workman was in the regular and permanent employment of the bank. The management served upon the workman a charge-sheet dated 15.12.93, which was duly replied by the workman. Instead of deciding the reply of the charge-sheet by a reasonable order, the bank appointed Sri Dilip Kumar Arora as enquiry officer. In the enquiry date was fixed 11.02.97, but suddenly enquiry officer was changed and one Sri R.K. Garg, was appointed as enquiry officer. It is also stated that the entire inquiry was conducted against the rules of natural justice by the enquiry officer. No witnesses were produced by the presenting officer during the inquiry proceedings. After concluding the inquiry the enquiry officer submitted his inquiry report dated 30.09.99 where in the charges against the workman were found established. Based on the enquiry report the services of the workman were dismissed by the bank *vide* order dated 30.09.99. Appeal was also preferred by the workman which too did not find favour.

4. On the basis of above it has been prayed that the entire action in the name of domestic inquiry against the workman is bad in law, therefore, the dismissal order passed by the opposite party bank is liable to be set aside and he is entitled to be reinstated in the service of the bank with full back wages and all consequential benefits.

5. The claim of the workman has been categorically refuted by the opposite party bank on a number of grounds. It is alleged that the workman has committed gross misconduct within the meaning of provisions of para 19(j) of Bipartite Settlement, therefore, he was served with a charge-sheet dated 15.12.93 which goes as under:—

6. Smt. Mushtfey Haseena has denied having visited the branch on 4.1.89 and denied having received any payment on that day. She has admitted having received Rs. 6773/- only at the branch on 2.1.88 being the proceeds of her PDA A/c No. 7639.

7. There was no request from the account holder to close the account on 04.01.89.

8. Though a clerk was provided to the department you have not involved him in the process and you personally prepared the slip OG 28/74 and passed the same for payment.

9. You have not obtained the signature of Smt. Mushtfey Haseena on the slip OG 28/74 though she was affixing her signature in Urdu and instead, passed the slip for payment with some thumb impressions stating to be that of Mushtfey Haseena.

10. A narration as photo attested with PD Account 7881 is made on the slip which is observed to be a false and irrelevant one since PD 7881 was standing in the name of one Sri Nihal Singh.

11. It is, therefore, evident from the above that you abused your position in the bank to fraudulent closure of PD Account 7639 and derived pecuniary advantage of Rs. 7085/- at the cost of the bank making you liable for disciplinary action.

12. The workman submitted his reply to the above charges which was not found suitable. Therefore, it was decided to constitute a departmental inquiry on the aforesaid charges. Sri R.K. Garg conducted the inquiry and after providing full opportunities to both the parties to make their respective claims he concluded the inquiry holding that the charges levelled against the workman stands proved. Accordingly he submitted his inquiry report before the disciplinary authority who after applying his open mind concurred with the findings of the enquiry officer which is of date 30.09.99, the workman was dismissed from the service of the bank with effect from 30.09.99.

13. It is also claimed that no illegality or irregularity has been committed by the enquiry officer during the conduct of inquiry against the workman. He followed the principles of natural justice at each and every stage by providing adequate opportunity of defense to the workman.

14. It is also stated that since the workman has deliberately committed serious misconduct under Paragraph on 9.5(j) of Bipartite Settlement therefore, he was rightly

charge sheeted. Moreover, he has rightly been punished on the proved misconduct. The punishment awarded to the workman fully commensurate with the gravity of proved misconduct, therefore, it is claimed that punishment awarded to the workman need not be interfered.

15. On the basis of above, it is prayed that the claim of the workman is devoid of merit and is liable to be rejected at the hands of this tribunal.

16. The workman has also filed rejoinder but nothing new has been stated therein.

17. Both the parties have filled respective documents in support of their case which will be discussed at the time recording findings on merit of the case.

18. It is pertinent to mention here that the workman prior to formation of preliminary issue has adduced himself as w.w.1 and recorded his statement on 01.09.04, but could not be cross examined.

19. The tribunal considering the request of the parties has framed a preliminary issued regarding fairness of the conduct of inquiry. Vide order dated 25.04.12 has decided that the inquiry held by the workman is vitiated Management was also given opportunity to prove the charges a fresh before the tribunal.

20. Thereafter the workman was cross examined by the bank on his statement.

21. Bank has also adduced evidence of Sri R. K. Garg Senior Manager as M.W. 1.

22. It is a fact initial burden lies on the management to prove the charges against the CSE.

23. I have examined the evidence of M.W.1. He is neither a witness of fact nor is having any knowledge. He admitted that he had never been in the branch. He is an inquiry officer. It is contended by the workman that no evidence has been produced by the management either documentary or oral to establish the charge against the workman.

24. The disputed question is whether the workman has closed the account of Smt. Mushtfey Haseena account No 76.39 on 04.01.89 in a fraudulent manner and misappropriated the proceeds of Rs. 7085/-. Is the claim of the management that this account 7639 has already been closed on 02.01.88 and Rs. 6773/- was paid to the account holder *vide* pay in slip paper No 18/63.

25. I have examined the evidence and contention of the claimant in this aspect.

26. It is contended by the claimant that the said account was never closed on 02.01.88, as he has seen the ledger and other relevant record. It is also claimed by the management that the account holder was putting her signature in Urdu. She was never putting her thumb

impression as is shown in the pay in slip paper no 18/64. The claimant stated on oath that he has examined the relevant record like account opening form and other records which bears the thumb impression of the account holder Smt. Mushtfey Haseena, but the management despite several demands during inquiry as well as during the evidence in the tribunal, the management did not produce the original account opening form of the account holder knowingly or otherwise. Even they did not produce the photocopy of this document. I have also inquired from the AR of the opposite party stating that this is a very material evidence to show whether the account holder has put her thumb impression or she signs in Urdu in the Account opening form but the management did not reply. Even they did not say what happens to the account opening form whether it has been lost. Therefore, it can be concluded that the management has knowingly withheld the account opening form of the account holder Smt. Mushtfey Haseena. The claimant has admitted that he has committed a clerical mistake without intention where as he has written photo attested at PD Account no. 7881. It is a fact that this account belongs to some other person but it is a fact that account holder Smt. Mushtfey Haseena was having other account in the same branch as Pigme Account which bears account no. 8081. Therefore, the claimant has admitted his mistake and stated that he wants to write account no. 8081 instead of 7881, but in hurry he committed this mistake.

27. It is a fact that there is double entry system in the branch. One account is the concerned account of the account holder in the shape of ledger and there is another consolidated ledger. It is also fact that in the bank there is half yearly Khatabandi and yearly there is an audit of the bank. When the concerned ledger sheet of the account holder have been examined which is paper no. 18/65-66 pertaining to account no. 7639, there is no entry of closure on 02.01.88 or thereafter but it bears a closure entry on 04.01.89, which is done by the CSE, who stated on oath that he has done it. The last balance Rs. 6247/- and after adding interest the total comes to Rs. 7085- which the CSE states that he has deliver it to the account holder through pay in slip paper no 18/64. The most surprising fact is that the claimant is basing all his allegations on an application moved by the account holder Smt. Mushtfey Haseena which is paper no. 18/71, (though original of this application has also been filed which is paper no. MEX 9 of department inquiry).

28. It is clear from the record produced before the tribunal that even no statement of the account holder Smt. Mushtfey Haseena has been recorded. It is also pertinent to mention here that the complainant Smt. Mushtfey Haseena who is material witness has also not been produced before the tribunal. Why she has not been produced, it appears that there was something fishy. If the claims that she has closed her account on 2.1.88 and received Rs. 6773/- and did not close the account on 4.1.89

and not received the amount Rs. 7085/- She was the best witness to say like this but the management has withheld her. M.W. 1 in his statement before this tribunal has not been able to state with conformity the signature appearing on paper no. 18/63 which is pay in slip dated 2.1.88 and the complaint which is paper no. 18/71 are one and same. He has stated that the signature appearing on these documents may be of the account holder. Word "may be" appearing in the statement of this witness carries no meaning.

29. The AR for the workman also contended that had the account 7639 been closed on 2.1.88 then there is a Khatabandi to be kept in the bank and this closure entry must have been made in the Khatabandi. He has drawn my attention towards paper no. 18/82-84 which are the papers of Khatabandi of the bank. I have examined these papers. Paper no. 18/82 bears the entry of account no. 7639. In the end the date is 27.04.88. This account is shown as running amount and the last amount is shown as Rs. 6247, but in paper no. 18/83 in-front of A/c 7639 the amount of Rs. 6247 is shown but what the management did in the column dated 1.2.88 after putting amount 6247, it has been scored out.

30. Similarly in paper no. 18/84 in front of account no. 7639 there is entry that it is closed on 2.1.88 and thereafter putting an amount 6247/- scored out. The management has not been able to adduce any evidence as to by whom these entries have been scored out and with what intent and purpose.

31. It is pertinent to mention that this account opening form or its photocopy was not produced before the inquiry officer also. He admitted in the statement that he had not seen it and he did not make any efforts to summon the original specimen signature card of the account holder.

32. M.W. 1 admitted in his statement that according to ledger of account holder 7639, this account has been closed on 4.1.89 on the first as well as last. It is also claimed that the cash book of that date 2.1.88 has not been produced by the bank either in the inquiry or before the tribunal. Therefore, the bank did not file any evidence relating to the voucher *i.e.* pay in slip of 2.1.88 like cash book or other records.

33. It is also stated that the management did not clear the fact how this application of Mushtfey Haseena was received who received it and this application in original also does not bear any date. I have examined this application. There are number of thumb impression on this application. Whose thumb impression belongs to, opposite party has not been able to prove it. Therefore the authenticity of the complaint of Smt. Mushtfey Haseena

becomes doubtful.

34. It is contended by the claimant that the account has been closed on 4.1.89 but the charge sheet has been served upon after about 5 years whereas this fact has been admitted by management witness that in the bank there is a procedure of half yearly Khatabandi and audit of account year wise. It is contended that after the service of the charge sheet the inquiry was commenced on 11.2.97 after a gap of about three years.

35. Therefore, I have heard the arguments at length examined the whole record, considering all the facts and circumstances of the case, I am of the view that the management has failed to establish the charges against the workman.

36. Therefore, it is held that the claimant is entitled to the relief and the action of the management in dismissing the workman is not just fair and legal. Therefore, he is entitled to be reinstated.

37. Considering the facts and circumstances of the case I am of the view that he is entitled 50% of the back wages, but he will be entitled to his seniority and all consequential benefits attached with post.

38. Reference is answered accordingly.

RAM PARKASH, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2013

का०आ० 2362.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक आफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय धनबाद के पंचाट संदर्भ संख्या (22/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2013 को प्राप्त हुआ था।

[सं० एल-12012/66/2011-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 17th October, 2013

S.O. 2362.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 22/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Central Bank of India, and their workmen, received by the Central Government on 17/10/2013.

[No. L-12012/66/2011-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d)(2A) of I.D. Act. 1947

Reference No. 22 of 2012

Employer in relation to the management of Central Bank of India, Zonal Office, Muzaffarpur.

AND

Their workman

PRESENT : Sri R.K. Saran, Presiding Officer.**Appearances:—**

For the Employers : None

For the Workman : R.K. Rakshit, Advocate

State : Bihar

Industry : Bank

Dated 23/09/2013

AWARD

By order No. L-12012/66/2011 IR (B-II), dt. 29/02/2012 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of section of 10 of the Industrial

Disputes Act 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Central Bank of India, Muzaffarpur in terminating the service of Munjay Kumar *w.e.f.* 23/08/2010 is legal and justified? What relief the claimant is entitled to?"

1. Before receipt of the reference the Ministry intimate the parties regarding the reference. After receipt of the reference, the workman in pursuance of the notice of the Ministry appeared before this Tribunal. Thereafter this Tribunal, giving the reference of Ministry's of Labour's letter again noticed the management. But none appears on behalf of the management. The workman filed affidavit evidence and documents and photo copies of his receiving wages from the management. From the photo copy of documents filed by the workman, signed by the Regional Manager is that the workman has been working from 4.10.1999 till date *i.e.* 27.9.11 *i.e.* more than 240 days. Therefore right accrues. In favour of the workman. Moreover knowing very well, the bank management remained absent to stall the proceeding. The workman also filed photo copies of cheques that he received payment till 2007. Therefore the Bank management to engage the workman in his earlier post on regular basis, without back wages.

R. K. SARAN, Presiding Officer